



AGENDA

GARDNER CITY COUNCIL

City Hall – 120 East Main Street -- Gardner, Kansas
Monday, February 21, 2022, 7:00 p.m.

***If you wish to provide written public comment regarding any items below by email, please provide them by noon on February 21, 2022 to cityclerk@gardnerkansas.gov. The meeting will be open to the public ***

***Watch this meeting live on the City's YouTube channel at <https://www.youtube.com/user/CityofGardnerKS> ***

CALL TO ORDER

PLEDGE OF ALLEGIANCE

PRESENTATIONS

PUBLIC HEARINGS

PUBLIC COMMENTS

Members of the public are welcome to use this time to make comments about City matters or items on the agenda that are not part of a public hearing

CONSENT AGENDA

1. Standing approval of the minutes as written for the regular meeting on February 7, 2022
2. Standing approval of City expenditures prepared January 31, 2022 in the amount of \$113.75; February 4, 2022 in the amount of \$422,109.35; and February 11, 2022 in the amount of \$487,243.18
3. Consider authorizing an agreement with the Southwest Johnson County Economic Development Corporation
4. Consider authorizing the execution of contracts to purchase chemicals for the Hillsdale Water Treatment Plant
5. Consider authorizing the execution of a lease contract to replace two specialty vehicles
6. Consider authorizing the execution of an Ownership Authorization letter acknowledging the ownership of a small parcel of land at Gardner Lake
7. Consider an appointment to the Airport Advisory Board
8. Consider accepting the dedication of right-of-way easements for the 167th and Kill Creek Intersection Project

PLANNING & ZONING CONSENT AGENDA

COMMITTEE RECOMMENDATIONS

OLD BUSINESS

NEW BUSINESS

1. Consider adopting a resolution approving the execution and delivery of a Second Amended and Restated Development Agreement for a development project within the City (GRATA Development)
2. Consider authorizing the execution of a contract for Substation 4 site location, land acquisition, and preliminary design
3. Consider accepting a voluntary annexation with landowner consent

COUNCIL UPDATES – Oral presentation unless otherwise noted

EXECUTIVE SESSION

ADJOURNMENT



In compliance with the Americans with Disabilities Act, the City of Gardner will provide reasonable accommodations for all public meetings. Persons requiring accommodations in attending any of our public meetings should contact the City Clerk's Office at 913-856-0945 a minimum of 48 hours prior to the meeting.

**RECORD OF PROCEEDINGS OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2022 – 9

February 7, 2022

The City Council of the City of Gardner, Kansas met in regular session on February 7, 2022, at 7:00 p.m. in the Council Chambers at Gardner City Hall, 120 East Main Street, Gardner, Kansas, with Mayor Todd Winters presiding. Present were Councilmembers Mark Baldwin, Steve Shute, Kacy Deaton, Tory Roberts, and Erik Van Potter. City staff present were City Administrator Jim Pruetting; Deputy City Administrator Amy Nasta; Finance Director Matthew Wolff; Police Chief James Belcher; Utilities Director Gonz Garcia; Parks Director Jason Bruce; Community Development Director David Knopick; Public Works Director Kellen Headlee; City Attorney Ryan Denk; and City Clerk Sharon Rose. Others present included those listed on the sign-in sheet and others who did not sign in.

CALL TO ORDER

There being a quorum of Councilmembers present, Mayor Winters called the meeting to order at 7:01 p.m.

PLEDGE OF ALLEGIANCE

Mayor Winters led those present in the Pledge of Allegiance.

PRESENTATIONS

PUBLIC HEARINGS

PUBLIC COMMENTS

No members of the public came forward.

CONSENT AGENDA

1. **Standing approval of the minutes as written for the regular meeting on January 18, 2022**
2. **Standing approval of City expenditures prepared January 14, 2022 in the amount of \$551,692.92; and January 21, 2022 in the amount of \$1,335,599.12; and January 28, 2022 in the amount of \$425,138.28**
3. **Consider authorizing the purchase of electric materials for New Trails Parkway**
4. **Consider authorizing the purchase of a Pipeline Observation System Management (POSM) server from POSM Software, LLC.**
5. **Consider reappointments to the Airport Advisory Board**
6. **Consider reappointments to the Public Works and Accessibility Advisory Committee**
7. **Consider approving the issuance of a Cereal Malt Beverage (CMB) license for the remainder of calendar year 2022**
8. **Consider authorizing an addendum to a contract with BHC Rhodes to complete the Technical Specifications update**

Councilmember Shute made a motion to approve the Consent Agenda.

Councilmember Deaton Seconded.

With a majority of the Councilmembers voting in
favor of the motion, the motion carried. (4-0-1
Absent)

PLANNING & ZONING CONSENT AGENDA

1. **Consider accepting the dedication of right-of-way and easements on the final plat for Symphony Farms VI**

Councilmember Deaton made a motion to approve the Planning & Zoning Consent Agenda.

Councilmember Shute Seconded.

With all of the Councilmembers voting in favor of the
motion, the motion carried.

COMMITTEE RECOMMENDATIONS

OLD BUSINESS

NEW BUSINESS

1. Consider authorizing the execution of an agreement to perform a Gas Turbine Controls system upgrade

Electric Generation Manager Matt Ponzer said they have two gas turbines for power generation and capacity. The city needs to perform upgrades to the control system in two phases. In the first phase, HPI Energy would do a site survey, assessment, and create drawing specifications. Phase 2 would include installation. This project is needed by summer in order to complete the summer capability testing on the units. If the city doesn't do the capability testing, they will need to purchase the capacity on the market, which is expensive. The entire control system upgrade is going to be approximately \$1 Million, but they would pay nearly \$1.7 Million if they don't complete the capacity test. To meet the schedule, staff suggests using the same company for both phases, rather than going through another RFQ process. They will provide a bid for phase 2 while completing phase 1, which takes two months off the project schedule and be completed by summer.

Councilmember Shute asked if staff is seeking council to authorize a single bidder for phase 2. Mr. Ponzer said they are asking for two things: authorization to execute phase 1 and approval to use the same contractor for phase 2. Shute asked if they would still submit a bid for phase 2. Ponzer confirmed, and would bring the bid to the March 7th council meeting for approval. City Administrator Pruetting asked Ponzer for why they didn't start earlier. Ponzer said it was a 2022 project and they were ready to start in January, but there were already shipping delays and long lead times. Staff didn't know they would have delays that would threaten the summer capability test. The solution is to modify current procedure to save two months. Shute noted concern that even by saving 2 months, they may still have to pay the penalty. Ponzer could put in liquidated damages on phase 2 to prevent delay. Mayor Winters asked if there is any leeway on the testing timeline. Ponzer said the date isn't set and they don't know if there will be any exceptions. They should assume they will get no exceptions. Councilmember Baldwin asked why staff didn't request the phase 2 bid at the same time as phase 1. Ponzer said the turbines were built in the 1960s, so the contractor needs to be on site inspecting equipment to realize the work that will be needed. Baldwin asked what qualifiers does the city have for them to provide a bid that's competitive when they are the only ones bidding. Pruetting said there aren't many companies qualified to do this work, and the company was vetted by the committee. Ponzer said part of the RFQ process required them to submit example projects and pricing. Staff can use the examples to make sure they aren't overcharging.

Councilmember Deaton made a motion to authorize the City Administrator to execute Phase 1 of the Turbine control system upgrade with HPI Energy for a contract amount of \$95,000

Councilmember Shute Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

COUNCIL UPDATES

Director Garcia said they completed the west interceptor that will serve Treadway Apartments. They also commissioned the east lift station at Grata, and should receive bids for the west lift station soon. Councilmember Shute asked about substation planning for the east side of I-35. Garcia said there is a staff report coming in the next couple of meetings.

Director Bruce said they are going through the seasonal application process, with interviews beginning in the next week. Independence Day is less than 5 months away. Staff secured 3 artists for the event, and are now planning the other pieces like staging and security, parking and fireworks. They plan to announce the main act with a teaser video.

Director Knopick said there is an EDAC meeting Wednesday at 6pm at City Hall. The manager of the farmer's market will attend. The committee is discussing the Destination Downtown elements.

**RECORD OF PROCEEDINGS OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2022 - 11

February 7, 2022

City Clerk Rose said they need one more member to serve on the EDAC interview committee. Councilmember Roberts asked how many committees they are supposed to be serving on. There was discussion on the dais regarding who is on what committee. Councilmember Shute suggested sharing the interview teams as they are currently so they can discuss vacancies.

City Administrator Pruetting said staff are close to having salary information ready. He attended a county managers meeting on Friday, and there are jurisdictions stretching. Shute asked for clarification. Pruetting said other jurisdictions are offering retention bonuses, signing bonuses, cost of living adjustments, cost of living bonuses, tenure bonuses, 401K matching. Some are offering multiple or all. Winters noted that bonuses are a one-time expense.

Councilmember Deaton asked how seasonal applications are going. Director Bruce said lifeguards were the main issue last year, and this year they are holding now at around 50, which is a good start. They are low in facility supervisors, which are 18 and older. Wages are an issue. Deaton thanked everyone who was part of the US 56 meeting. It was informative. Deaton also thanked two officers who helped her son when he broke down on the side of the road late at night.

Councilmember Roberts also attended the US 56 open house. The information was also shared on social media, and she thanked staff for getting that out to the public. Roberts asked if the new stop light at Madison and Moonlight will get high visibility street signs. Director Headlee will look into it. Roberts also thanked crews for snow removal earlier in the week.

Councilmember Baldwin asked if there are any issues with the pool. Director Bruce is not aware of any issues. Staff will start processes in late March. Baldwin asked for updates on the inclusive park equipment. Bruce attended a state conference recently and met with others. They are sending sample projects. Bruce will put together a presentation. Baldwin said people complain about snow removal, but the city does a good job and staff needs to know that.

Councilmember Shute noted that the EDAC is important as a linchpin of the work being done around downtown. Anyone interested in downtown should attend the meeting on Wednesday.

EXECUTIVE SESSION

1. Consider entering into executive session to discuss matters of attorney-client privilege relating to a development agreement

Councilmember Baldwin made a motion to recess into executive session pursuant to K.S.A. 75-4319 (b)(2), to discuss personnel matters of attorney-client privilege relating to a development agreement beginning at 7:28 pm; returning to regular session at 7:58 pm.

Councilmember Deaton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

Councilmember Van Potter made a motion to resume regular session at 7:58 p.m.

Councilmember Deaton seconded.

2. Consider entering into executive session to discuss personnel matters of non-elected personnel relating to the City Administrator's annual performance review

Councilmember Deaton made a motion to recess into executive session pursuant to K.S.A. 75-4319 (b)(1), to discuss personnel matters of non-elected personnel relating to the City Administrator's annual performance review beginning at 7:59 pm; returning to regular session at 8:14 pm.

Councilmember Baldwin Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

**RECORD OF PROCEEDINGS OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2022 - 12

February 7, 2022

Councilmember Deaton made a motion to resume regular session at 8:15 p.m.

Councilmember Shute seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

ADJOURNMENT

There being no further business to come before the Council, on a motion duly made by Councilmember Baldwin and seconded by Councilmember Shute the meeting adjourned at 8:15p.m.

City Clerk

VEND NO	SEQ#	VENDOR NAME		BNK	CHECK/DUE	ACCOUNT	ITEM		CHECK	EFT, EPAY OR
INVOICE		VOUCHER	P.O.		DATE	NO	DESCRIPTION		AMOUNT	HAND-ISSUED
NO		NO	NO							AMOUNT
0005013	00	HSA BANK								
W358235		000139		00	01/26/2022	001-1140-411.31-15	MONTHLY BILLING	CHECK #:	131	113.75
							VENDOR TOTAL *		.00	113.75
							HAND ISSUED TOTAL ***			113.75
							TOTAL EXPENDITURES ****		.00	113.75
GRAND TOTAL							*****			113.75

VEND NO INVOICE NO	SEQ#	VENDOR NAME VOUCHER P.O. NO	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0004265 9214415	00	ACCESS INFORMATION PROTECTED 000145	00	02/04/2022	001-1150-411.31-15	OFF-SITE STORAGE	1,520.30	
						VENDOR TOTAL *	1,520.30	
0004197 431554	00	AID ANIMAL HOSPITAL, INC 000142	00	02/04/2022	001-2120-421.52-20	K-9 PHYSICAL	746.50	
						VENDOR TOTAL *	746.50	
0099999 76200	00	ALEXIS MARLE GILMORE 000145	00	02/04/2022	001-0000-228.30-00	BOND REFUND	150.00	
						VENDOR TOTAL *	150.00	
0000029 11825692	00	ALTEC INDUSTRIES, INC. 000142	00	02/04/2022	501-4130-441.52-02	PARTS	EFT:	90.09
						VENDOR TOTAL *	.00	90.09
0099999 70138	00	ANGEL RAYMUNDO RODARTE-FIERRO 000145	00	02/04/2022	001-0000-228.30-00	BOND REFUND	125.00	
						VENDOR TOTAL *	125.00	
0001986 5187818-00	00	ANIXTER, INC. PI0066 007912	00	01/21/2022	501-4130-441.52-31	CABLE	EFT:	17,304.60
5188555-00		PI0067 007913	00	01/21/2022	501-4130-441.52-31	CONDUIT	EFT:	9,031.69
5179162-00		000142	00	02/04/2022	501-4130-441.52-31	PARTS	EFT:	918.09
5069669-03		000142	00	02/04/2022	501-4130-441.52-31	PARTS	EFT:	710.05
5195805-01		000142	00	02/04/2022	501-4130-441.52-31	PARTS	EFT:	1,735.84
5195805-00		000142	00	02/04/2022	501-4130-441.52-31	PARTS	EFT:	1,735.84
5195805-02		000142	00	02/04/2022	501-4130-441.52-31	PARTS	EFT:	216.98
5194240-00		000142	00	02/04/2022	501-4130-441.52-31	PARTS	EFT:	150.53
5198178-00		000142	00	02/04/2022	501-4130-441.52-31	PARTS	EFT:	3,300.67
						VENDOR TOTAL *	.00	35,104.29
0004876 4130279	00	ARTHUR GALLAGHER RISK MANAGEMENT 000142	00	02/04/2022	601-1230-412.45-02	AIRPORT LIABILITY 22-23	EFT:	3,854.00
						VENDOR TOTAL *	.00	3,854.00
0000295 54016622	00	ASPLUNDH TREE EXPERT CO. INC. PI0069 007916	00	01/21/2022	501-4130-441.31-15	TREE TRIMMING	EFT:	4,219.56
54X95322		PI0070 007916	00	01/21/2022	501-4130-441.31-15	TREE TRIMMING	EFT:	4,102.35
						VENDOR TOTAL *	.00	8,321.91
0005014 19586	00	ATTIC STORAGE OF GARDNER 000145	00	02/04/2022	603-3150-431.44-01	RENT	EFT:	2,028.00
						VENDOR TOTAL *	.00	2,028.00
0004465 INUS047855	00	AXON ENTERPRISE, INC. PI0071 007915	00	01/13/2022	001-2120-421.52-20	TASER CERTIFICATION	EFT:	24,480.00
						VENDOR TOTAL *	.00	24,480.00
0004994	00	BENEFITS DIRECT						

VEND NO	SEQ#	VENDOR NAME							EFT, EPAY OR
INVOICE		VOUCHER	P.O.	BNK	CHECK/DUE	ACCOUNT	ITEM	CHECK	HAND-ISSUED
NO		NO	NO		DATE	NO	DESCRIPTION	AMOUNT	AMOUNT
0004994	00	BENEFITS DIRECT							
A012128		000150		00	02/04/2022	001-1120-411.21-01	MONTHLY BILLING	EFT:	55.60
A012128		000149		00	02/04/2022	001-1140-411.31-15	MONTHLY BILLING	EFT:	377.50
A012128		000151		00	02/04/2022	001-1140-411.21-01	MONTHLY BILLING	EFT:	30.18
A012128		000152		00	02/04/2022	001-1150-411.21-01	MONTHLY BILLING	EFT:	6.50
A012128		000154		00	02/04/2022	001-1305-413.21-01	MONTHLY BILLING	EFT:	16.28
A012128		000155		00	02/04/2022	001-1310-413.21-01	MONTHLY BILLING	EFT:	48.20
A012128		000157		00	02/04/2022	001-1330-413.21-01	MONTHLY BILLING	EFT:	34.30
A012128		000159		00	02/04/2022	001-2110-421.21-01	MONTHLY BILLING	EFT:	81.66
A012128		000160		00	02/04/2022	001-2120-421.21-01	MONTHLY BILLING	EFT:	235.60
A012128		000161		00	02/04/2022	001-2130-421.21-01	MONTHLY BILLING	EFT:	6.50
A012128		000162		00	02/04/2022	001-3110-431.21-01	MONTHLY BILLING	EFT:	13.90
A012128		000163		00	02/04/2022	001-3116-431.21-01	MONTHLY BILLING	EFT:	9.78
A012128		000164		00	02/04/2022	001-3120-431.21-01	MONTHLY BILLING	EFT:	56.24
A012128		000165		00	02/04/2022	001-3130-431.21-01	MONTHLY BILLING	EFT:	57.08
A012128		000174		00	02/04/2022	001-6105-461.21-01	MONTHLY BILLING	EFT:	46.40
A012128		000175		00	02/04/2022	001-6120-461.21-01	MONTHLY BILLING	EFT:	75.10
A012128		000176		00	02/04/2022	001-7110-471.21-01	MONTHLY BILLING	EFT:	44.08
A012128		000177		00	02/04/2022	001-7120-471.21-01	MONTHLY BILLING	EFT:	33.46
A012128		000167		00	02/04/2022	501-4110-441.21-01	MONTHLY BILLING	EFT:	26.90
A012128		000168		00	02/04/2022	501-4120-441.21-01	MONTHLY BILLING	EFT:	39.90
A012128		000169		00	02/04/2022	501-4130-441.21-01	MONTHLY BILLING	EFT:	95.56
A012128		000170		00	02/04/2022	521-4210-442.21-01	MONTHLY BILLING	EFT:	13.90
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A012128		000172		00	02/04/2022	521-4230-442.21-01	MONTHLY BILLING	EFT:	69.18
A012128		000173		00	02/04/2022	531-4320-443.21-01	MONTHLY BILLING	EFT:	40.80
A012128		000153		00	02/04/2022	601-1230-412.21-01	MONTHLY BILLING	EFT:	13.90
A012128		000158		00	02/04/2022	602-1340-413.21-01	MONTHLY BILLING	EFT:	41.70
A012128		000166		00	02/04/2022	603-3150-431.21-01	MONTHLY BILLING	EFT:	6.50
A012128		000156		00	02/04/2022	604-1320-413.21-01	MONTHLY BILLING	EFT:	43.18
A012128		000147		00	02/04/2022	721-0000-202.03-07	MONTHLY BILLING	EFT:	9,480.40
A012128		000148		00	02/04/2022	721-0000-202.03-08	MONTHLY BILLING	EFT:	259.46
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0001773	00	BHC RHODES							
40761A		PI0064	007391	00	01/28/2022	130-3130-431.62-04	PROFESSIONAL SERVICES	EFT:	2,315.00
VENDOR TOTAL *								.00	2,315.00
0005045	00	BUILDING CONTROLS AND SERVICES INC							
51894		000142		00	02/04/2022	603-3150-431.31-15	JUSTICE CENTER FAN MAINT	EFT:	147.00
VENDOR TOTAL *								.00	147.00
0004114	00	CHAFFEE LOK-PRO							
3063		007234		00	02/04/2022	551-4520-445.43-03	HANGER REKEY	EFT:	150.00
VENDOR TOTAL *								.00	150.00
0005198	00	CHARTER COMMUNICATIONS							
0108665011922		000144		00	02/04/2022	602-1340-413.47-05	MONTHLY BILLING	EFT:	119.99
VENDOR TOTAL *								.00	119.99
0099999	00	CRUM, ELIZABETH							

VEND NO INVOICE NO	SEQ#	VENDOR NAME VOUCHER P.O. NO	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0099999 000039839	00	CRUM, ELIZABETH UT	00	02/03/2022	501-0000-229.00-00	FINAL BILL REFUND	11.16	
VENDOR TOTAL *							11.16	
0000601 29590	00	CUSTOM METAL & FABRICATION 000142	00	02/04/2022	001-3130-431.31-10	ADA COMPLIANCE	EFT:	1,943.10
VENDOR TOTAL *							.00	1,943.10
0004998	00	DELTA DENTAL OF KANSAS						
1005114202202	000142		00	02/04/2022	001-1120-411.21-01	MONTHLY BILLING	EFT:	152.64
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1005114202202	000142		00	02/04/2022	001-1305-413.21-01	MONTHLY BILLING	EFT:	71.32
1005114202202	000142		00	02/04/2022	001-1310-413.21-01	MONTHLY BILLING	EFT:	173.08
1005114202202	000142		00	02/04/2022	001-1330-413.21-01	MONTHLY BILLING	EFT:	122.20
1005114202202	000142		00	02/04/2022	001-2110-421.21-01	MONTHLY BILLING	EFT:	376.60
1005114202202	000142		00	02/04/2022	001-2120-421.21-01	MONTHLY BILLING	EFT:	832.56
1005114202202	000142		00	02/04/2022	001-2130-421.21-01	MONTHLY BILLING	EFT:	20.44
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1005114202202	000142		00	02/04/2022	501-4120-441.21-01	MONTHLY BILLING	EFT:	163.08
1005114202202	000142		00	02/04/2022	501-4130-441.21-01	MONTHLY BILLING	EFT:	346.16
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1005114202202	000142		00	02/04/2022	521-4220-442.21-01	MONTHLY BILLING	EFT:	213.96
1005114202202	000142		00	02/04/2022	521-4230-442.21-01	MONTHLY BILLING	EFT:	153.08
1005114202202	000142		00	02/04/2022	531-4320-443.21-01	MONTHLY BILLING	EFT:	122.20
1005114202202	000142		00	02/04/2022	602-1340-413.21-01	MONTHLY BILLING	EFT:	152.64
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VENDOR TOTAL *							.00	9,165.07
0004096 37482	00	DESIGN 4 SPORTS 000137	00	02/04/2022	001-6120-461.53-02	SAFETY UNIFORMS	EFT:	91.00
VENDOR TOTAL *							.00	91.00
0003960 165847	00	ELLIOTT EQUIPMENT COMPANY 000142	00	02/04/2022	531-4330-443.52-20	CAMERA RECHARGE KIT	EFT:	753.00
VENDOR TOTAL *							.00	753.00
0004946 6466308678	00 01220	EVERGY 000142	00	02/04/2022	531-4320-443.40-05	MONTHLY BILLING	28.58	
VENDOR TOTAL *							28.58	
0000855 15888685	00	EWING IRRIGATION PRODUCTS, INC 000142	00	02/04/2022	001-6120-461.52-01	ICE MELT	461.66	

VEND NO	SEQ#	VENDOR NAME		BNK	CHECK/DUE	ACCOUNT	ITEM	CHECK	EFT, EPAY OR
INVOICE		VOUCHER	P.O.		DATE	NO	DESCRIPTION	AMOUNT	HAND-ISSUED
NO		NO	NO						AMOUNT
<hr/>									
0000855	00	EWING IRRIGATION PRODUCTS, INC							
VENDOR TOTAL *								461.66	
0002956	00	FASTENAL CO.							
KSKA3145657		007232		00	02/04/2022	001-6120-461.53-02	SUPPLIES	EFT:	316.13
VENDOR TOTAL *								.00	316.13
0001917	00	FLAME-OUT							
62111		000142		00	02/04/2022	551-4520-445.31-15	ANNUAL SERVICE	EFT:	524.95
VENDOR TOTAL *								.00	524.95
0004996	00	FLEX MADE EASY							
01312022		000142		00	02/04/2022	721-0000-202.03-11	CONTRIBUTIONS	EFT:	935.32
VENDOR TOTAL *								.00	935.32
0000086	00	GALLS, LLC							
020320998		000143		00	02/04/2022	001-2110-421.53-02	UNIFORMS	EFT:	88.45
020336894		000145		00	02/04/2022	001-2110-421.53-02	UNIFORMS	EFT:	60.80
020289394		000143		00	02/04/2022	001-2120-421.53-02	UNIFORMS	EFT:	86.36
020320986		000143		00	02/04/2022	001-2120-421.53-02	UNIFORMS	EFT:	125.00
020321002		000143		00	02/04/2022	001-2120-421.53-02	UNIFORMS	EFT:	87.24
020302482		000143		00	02/04/2022	001-2120-421.53-02	UNIFORMS	EFT:	24.69
020339883		000145		00	02/04/2022	001-2120-421.53-02	UNIFORMS	EFT:	16.38
VENDOR TOTAL *								.00	488.92
0004993	00	HARTFORD, THE							
362714089345		000143		00	02/04/2022	001-1120-411.21-02	MONTHLY BILLING	EFT:	22.90
362714089345		000143		00	02/04/2022	001-1140-411.21-02	MONTHLY BILLING	EFT:	12.20
362714089345		000143		00	02/04/2022	001-1150-411.21-02	MONTHLY BILLING	EFT:	3.08
362714089345		000143		00	02/04/2022	001-1305-413.21-02	MONTHLY BILLING	EFT:	9.16
362714089345		000143		00	02/04/2022	001-1310-413.21-02	MONTHLY BILLING	EFT:	15.79
362714089345		000143		00	02/04/2022	001-1330-413.21-02	MONTHLY BILLING	EFT:	12.24
362714089345		000143		00	02/04/2022	001-2110-421.21-02	MONTHLY BILLING	EFT:	35.14
362714089345		000143		00	02/04/2022	001-2120-421.21-02	MONTHLY BILLING	EFT:	129.98
362714089345		000143		00	02/04/2022	001-2130-421.21-02	MONTHLY BILLING	EFT:	4.58
362714089345		000143		00	02/04/2022	001-3110-431.21-02	MONTHLY BILLING	EFT:	9.16
362714089345		000143		00	02/04/2022	001-3116-431.21-02	MONTHLY BILLING	EFT:	4.58
362714089345		000143		00	02/04/2022	001-3120-431.21-02	MONTHLY BILLING	EFT:	35.14
362714089345		000143		00	02/04/2022	001-3130-431.21-02	MONTHLY BILLING	EFT:	25.98
362714089345		000143		00	02/04/2022	001-6105-461.21-02	MONTHLY BILLING	EFT:	19.90
362714089345		000143		00	02/04/2022	001-6120-461.21-02	MONTHLY BILLING	EFT:	32.14
362714089345		000143		00	02/04/2022	001-7110-471.21-02	MONTHLY BILLING	EFT:	18.32
362714089345		000143		00	02/04/2022	001-7120-471.21-02	MONTHLY BILLING	EFT:	12.20
362714089345		000143		00	02/04/2022	501-4110-441.21-02	MONTHLY BILLING	EFT:	16.82
362714089345		000143		00	02/04/2022	501-4120-441.21-02	MONTHLY BILLING	EFT:	21.40
362714089345		000143		00	02/04/2022	501-4130-441.21-02	MONTHLY BILLING	EFT:	40.85
362714089345		000143		00	02/04/2022	521-4210-442.21-02	MONTHLY BILLING	EFT:	4.58
362714089345		000143		00	02/04/2022	521-4220-442.21-02	MONTHLY BILLING	EFT:	25.98
362714089345		000143		00	02/04/2022	521-4230-442.21-02	MONTHLY BILLING	EFT:	35.22
362714089345		000143		00	02/04/2022	531-4320-443.21-02	MONTHLY BILLING	EFT:	22.90

VEND NO	SEQ#	VENDOR NAME		BNK	CHECK/DUE	ACCOUNT	ITEM	CHECK	EFT, EPAY OR
INVOICE		VOUCHER	P.O.		DATE	NO	DESCRIPTION	AMOUNT	HAND- ISSUED
NO		NO	NO						AMOUNT
<hr/>									
0004993	00	HARTFORD, THE							
362714089345		000143		00	02/04/2022	551-4520-445.21-02	MONTHLY BILLING	EFT:	1.13
362714089345		000143		00	02/04/2022	601-1230-412.21-02	MONTHLY BILLING	EFT:	4.58
362714089345		000143		00	02/04/2022	602-1340-413.21-02	MONTHLY BILLING	EFT:	13.74
362714089345		000143		00	02/04/2022	603-3150-431.21-02	MONTHLY BILLING	EFT:	4.58
362714089345		000143		00	02/04/2022	604-1320-413.21-02	MONTHLY BILLING	EFT:	25.98
VENDOR TOTAL *								.00	620.25
0000463	00	HOLIDAY CONTRACTING, INC.							
768 SUMAC		000143		00	02/04/2022	521-4230-442.31-15	CONCRETE	EFT:	1,850.00
VENDOR TOTAL *								.00	1,850.00
0000481	00	HOLLIDAY SAND AND GRAVEL							
1500329187		000137		00	02/04/2022	001-3120-431.47-38	SPOILS	EFT:	71.50
1500331727		000143		00	02/04/2022	001-3120-431.47-38	SPOILS	EFT:	1,072.50
1500331574		000144		00	02/04/2022	001-3120-431.47-38	SPOILS	EFT:	429.00
VENDOR TOTAL *								.00	1,573.00
0005040	00	HSA BANK COBRA							
COG01282022		000137		00	02/04/2022	001-1140-411.31-15	COBRA ADMIN FEES	145.00	
VENDOR TOTAL *								145.00	
0005000	00	HUMANA INSURANCE COMPANY							
702625575		000137		00	02/04/2022	001-1120-411.21-01	MONTHLY BILLING	EFT:	4,934.88
702625575		000137		00	02/04/2022	001-1140-411.21-01	MONTHLY BILLING	EFT:	1,072.44
702625575		000137		00	02/04/2022	001-1150-411.21-01	MONTHLY BILLING	EFT:	536.22
702625575		000137		00	02/04/2022	001-1305-413.21-01	MONTHLY BILLING	EFT:	1,556.32
702625575		000137		00	02/04/2022	001-1310-413.21-01	MONTHLY BILLING	EFT:	4,163.70
702625575		000137		00	02/04/2022	001-1330-413.21-01	MONTHLY BILLING	EFT:	2,765.48
702625575		000137		00	02/04/2022	001-2110-421.21-01	MONTHLY BILLING	EFT:	7,986.44
702625575		000137		00	02/04/2022	001-2120-421.21-01	MONTHLY BILLING	EFT:	19,711.00
702625575		000137		00	02/04/2022	001-2130-421.21-01	MONTHLY BILLING	EFT:	536.22
702625575		000137		00	02/04/2022	001-3116-431.21-01	MONTHLY BILLING	EFT:	1,020.10
702625575		000137		00	02/04/2022	001-3120-431.21-01	MONTHLY BILLING	EFT:	5,689.06
702625575		000137		00	02/04/2022	001-3130-431.21-01	MONTHLY BILLING	EFT:	4,661.44
702625575		000137		00	02/04/2022	001-6105-461.21-01	MONTHLY BILLING	EFT:	4,026.98
702625575		000137		00	02/04/2022	001-6120-461.21-01	MONTHLY BILLING	EFT:	6,045.66
702625575		000137		00	02/04/2022	001-7110-471.21-01	MONTHLY BILLING	EFT:	3,490.76
702625575		000137		00	02/04/2022	001-7120-471.21-01	MONTHLY BILLING	EFT:	2,911.32
702625575		000137		00	02/04/2022	501-4110-441.21-01	MONTHLY BILLING	EFT:	3,301.70
702625575		000137		00	02/04/2022	501-4120-441.21-01	MONTHLY BILLING	EFT:	4,091.56
702625575		000137		00	02/04/2022	501-4130-441.21-01	MONTHLY BILLING	EFT:	8,425.64
702625575		000137		00	02/04/2022	521-4210-442.21-01	MONTHLY BILLING	EFT:	1,209.16
702625575		000137		00	02/04/2022	521-4220-442.21-01	MONTHLY BILLING	EFT:	5,818.70
702625575		000137		00	02/04/2022	521-4230-442.21-01	MONTHLY BILLING	EFT:	5,982.80
702625575		000137		00	02/04/2022	531-4320-443.21-01	MONTHLY BILLING	EFT:	3,778.06
702625575		000137		00	02/04/2022	601-1230-412.31-15	MONTHLY BILLING	EFT:	141.11
702625575		000137		00	02/04/2022	601-1230-412.21-01	MONTHLY BILLING	EFT:	536.22
702625575		000137		00	02/04/2022	601-1230-412.31-15	MONTHLY BILLING	EFT:	719.92
702625575		000137		00	02/04/2022	602-1340-413.21-01	MONTHLY BILLING	EFT:	3,627.48

VEND NO	SEQ#	VENDOR NAME	BNK	CHECK/DUE	ACCOUNT	ITEM	CHECK	EFT, EPAY OR
INVOICE		VOUCHER P.O.		DATE	NO	DESCRIPTION	AMOUNT	HAND- ISSUED
NO		NO NO						AMOUNT
0005000	00	HUMANA INSURANCE COMPANY						
702625575		000137	00	02/04/2022	604-1320-413.21-01	MONTHLY BILLING	EFT:	4,798.16
702625575		000137	00	02/04/2022	721-0000-202.03-08	MONTHLY BILLING	EFT:	23,989.65
						VENDOR TOTAL *	.00	137,528.18
0001830	00	IMSA						
66846 1/22		000137	00	02/04/2022	001-3120-431.46-02	MEMBERSHIP IMSA	EFT:	270.00
						VENDOR TOTAL *	.00	270.00
0000108	00	K.C. BOBCAT INC						
19164204		000144	00	02/04/2022	001-3120-431.43-02	BOBCAT REPAIR	220.74	
						VENDOR TOTAL *	220.74	
0002671	00	KANSAS GAS SERVICE						
105962227	0122	000144	00	02/04/2022	001-6120-461.40-04	MONTHLY BILLING	796.44	
						VENDOR TOTAL *	796.44	
0000421	00	KANSAS MUNICIPAL UTILITIES, INC.						
16775		PI0068 007914	00	01/12/2022	501-4110-441.46-02	MEMBER DUES	EFT:	18,549.00
						VENDOR TOTAL *	.00	18,549.00
0000112	00	KANSAS ONE-CALL SYSTEM, INC.						
1090249		007230	00	02/04/2022	001-3120-431.31-15	UTILITY LOCATES	EFT:	113.70
1090249		007227	00	02/04/2022	501-4130-441.40-06	UTILITY LOCATES	EFT:	113.70
1090659		007234	00	02/04/2022	501-4130-441.40-06	LOCATES	EFT:	24.00
1090249		007228	00	02/04/2022	521-4230-442.40-06	UTILITY LOCATES	EFT:	113.70
1090249		007229	00	02/04/2022	531-4330-443.40-06	UTILITY LOCATES	EFT:	113.70
						VENDOR TOTAL *	.00	478.80
0004769	00	KRONOS SAASHR, INC						
11866484		000137	00	02/04/2022	602-1340-413.47-05	ANNUAL INTOUCH FEE	EFT:	719.32
						VENDOR TOTAL *	.00	719.32
0005186	00	LINDE GAS & EQUIPMENT						
68684850		000145	00	02/04/2022	001-3116-431.44-02	CYLINDER RENTAL	EFT:	185.22
						VENDOR TOTAL *	.00	185.22
0004957	00	NEXGRID, LLC						
2021344		PI0072 007792	00	11/12/2021	501-4130-441.52-31	METERS	EFT:	1,286.60
2021400		PI0073 007917	00	11/30/2021	602-1340-413.47-05	2022 ANNUAL SUPPORT	EFT:	59,262.00
2021407		PI0074 007917	00	12/15/2021	602-1340-413.47-05	METERS	EFT:	9,600.00
						VENDOR TOTAL *	.00	70,148.60
0001569	00	PAYCOR, INC						
INV03110211		000140	00	02/01/2022	001-1310-413.31-15	PAYROLL SERVICES W-2'S	CHECK #: 107	2,756.40
						VENDOR TOTAL *	.00	2,756.40
0005207	00	PENLAND LAW, P.A.						
00122		000137	00	02/04/2022	001-1330-413.31-02	COURT PRO TEM	EFT:	210.00
						VENDOR TOTAL *	.00	210.00
0004385	00	POMP'S TIRE SERVICE, INC.						

VEND NO	SEQ#	VENDOR NAME							EFT, EPAY OR
INVOICE		VOUCHER	P.O.	BNK	CHECK/DUE	ACCOUNT	ITEM	CHECK	HAND-ISSUED
NO		NO	NO		DATE	NO	DESCRIPTION	AMOUNT	AMOUNT
0004385	00	POMP'S TIRE SERVICE, INC.							
1180059980		000144		00	02/04/2022	001-3120-431.43-05	TIRES #503	EFT:	913.62
							VENDOR TOTAL *	.00	913.62
0003566	00	PREFERRED FAMILY HEALTHCARE INC							
22 FUNDING		000145		00	02/04/2022	125-1120-411.49-04	2022 ALCOHOL TAX FUNDING	EFT:	6,000.00
							VENDOR TOTAL *	.00	6,000.00
0004198	00	PROTECT YOUTH SPORTS							
930852		000144		00	02/04/2022	001-6110-461.47-53	BACKGROUND CHECK	EFT:	43.35
							VENDOR TOTAL *	.00	43.35
0000160	00	SHAWNEE COPY CENTER INC.							
128770		000144		00	02/04/2022	001-1110-411.52-20	BUSINESS CARDS M BALDWIN	EFT:	70.00
128774		000144		00	02/04/2022	001-1110-411.52-20	BUSINESS CARDS S SHUTE	EFT:	70.00
128771		000144		00	02/04/2022	001-1110-411.52-20	BUSINESS CARDS T WINTERS	EFT:	70.00
128776		000144		00	02/04/2022	001-1110-411.52-20	BUSINESS CARDS E POTTER	EFT:	70.00
							VENDOR TOTAL *	.00	280.00
0004179	00	SHELTON, BILL ALAN							
01152022		000137		00	02/04/2022	551-4520-445.31-15	SNOW PLOWING	812.50	
							VENDOR TOTAL *	812.50	
0000161	00	SIGN HERE, INC.							
24710		007236		00	02/04/2022	001-3120-431.43-05	DECAL REPAIR #503	EFT:	325.66
							VENDOR TOTAL *	.00	325.66
0001786	00	SMITTY'S LAWN & GARDEN EQUIPMENT							
49691		000144		00	02/04/2022	001-3120-431.52-16	PLOW CUTTING EDGES #806	553.10	
49418		000144		00	02/04/2022	001-3120-431.52-16	PONY MOTOR	687.15	
49419		000144		00	02/04/2022	001-3120-431.52-16	PONY MOTOR STARTER	116.89	
							VENDOR TOTAL *	1,357.14	
0004785	00	SUMNERONE, INC							
3107191		000144		00	02/04/2022	501-4130-441.43-02	COPIER MAINTENANCE PROGRA	EFT:	22.19
3112325		007231		00	02/04/2022	602-1340-413.43-02	MONTHLY BILLING	EFT:	63.83
							VENDOR TOTAL *	.00	86.02
0004124	00	THOMAS MCGEE, LC							
4993		007225		00	02/04/2022	601-1230-412.46-01	FIRST AID/CPR TRAINING	EFT:	585.00
							VENDOR TOTAL *	.00	585.00
0000105	00	TYLER TECHNOLOGIES, INC							
025-365080		000137		00	02/04/2022	602-1340-413.47-05	ANNUAL SUPPORT FEE	EFT:	2,200.00
							VENDOR TOTAL *	.00	2,200.00
0003879	00	WALTERS EXCAVATING LLC							
PAY APP 1		PI0054		00	01/28/2022	531-4340-443.62-10	CONTRACTED WORK	CHECK #: 19301	75,625.50-
PAY APP 1		PI0054		00	02/02/2022	531-4340-443.62-10	CONTRACTED WORK	75,625.50	
PAY APP 2		PI0075 007844	00	02/01/2022		531-4340-443.62-10	WEST SEWER INTERCEPTOR	54,654.00	

VEND NO	SEQ#	VENDOR NAME							EFT, EPAY OR
INVOICE		VOUCHER	P.O.	BNK	CHECK/DUE	ACCOUNT	ITEM	CHECK	HAND- ISSUED
NO		NO	NO		DATE	NO	DESCRIPTION	AMOUNT	AMOUNT
<hr/>									
0003879	00	WALTERS EXCAVATING LLC							
VENDOR TOTAL *								130,279.50	75,625.50
0003687	00	WATCHGUARD VIDEO							
ADVREP222548		000144		00	02/04/2022	001-2120-421.52-20	BODY CAMERA	480.00	
ACCINV0034534		000144		00	02/04/2022	001-2120-421.52-20	CAMERA VEST MOUNTS	215.00	
VENDOR TOTAL *								695.00	
0004599	00	WATER RESOURCES SOLUTIONS, LLC							
21-1577		PI0065	007890	00	01/31/2022	001-3130-431.31-10	CONSULTING	EFT:	343.00
VENDOR TOTAL *								.00	343.00
0003221	00	WEX BANK							
77631115		007233		00	02/04/2022	001-2110-421.52-09	FUEL	EFT:	117.02
77631115		000141		00	02/04/2022	001-2110-421.52-09	FUEL	EFT:	101.49
77631115		007233		00	02/04/2022	001-2120-421.52-09	FUEL	EFT:	3,052.90
77631115		007233		00	02/04/2022	001-2120-421.43-05	FUEL	EFT:	154.65
77631115		000141		00	02/04/2022	001-2120-421.52-09	FUEL	EFT:	1,986.05
77631115		000141		00	02/04/2022	001-2120-421.43-05	FUEL	EFT:	2,350.12
77631115		007233		00	02/04/2022	001-2130-421.52-09	FUEL	EFT:	101.35
77631115		000141		00	02/04/2022	001-2130-421.52-09	FUEL	EFT:	77.75
77631115		000142		00	02/04/2022	001-3116-431.52-09	FUEL	EFT:	70.94
77631115		007233		00	02/04/2022	001-3120-431.52-09	FUEL	EFT:	1,040.38
77631115		000142		00	02/04/2022	001-3120-431.52-09	FUEL	EFT:	1,602.16
77631115		000142		00	02/04/2022	001-3120-431.52-09	FUEL	EFT:	40.21
77631115		000179		00	02/04/2022	001-3120-431.52-09	FUEL	EFT:	2.57
77631115		007233		00	02/04/2022	001-3130-431.52-09	FUEL	EFT:	109.61
77631115		000142		00	02/04/2022	001-3130-431.52-09	FUEL	EFT:	104.78
77631115		007233		00	02/04/2022	001-6120-461.52-09	FUEL	EFT:	710.45
77631115		000142		00	02/04/2022	001-6120-461.52-09	FUEL	EFT:	166.67
77631115		007233		00	02/04/2022	001-7120-471.52-09	FUEL	EFT:	151.95
77631115		000142		00	02/04/2022	001-7120-471.52-09	FUEL	EFT:	80.03
77631115		007233		00	02/04/2022	603-3150-431.52-09	FUEL	EFT:	75.94
77631115		000142		00	02/04/2022	603-3150-431.52-09	FUEL	EFT:	42.92
77631115		007233		00	02/04/2022	604-1320-413.52-09	FUEL	EFT:	198.82
77631115		000142		00	02/04/2022	604-1320-413.52-09	FUEL	EFT:	137.58
VENDOR TOTAL *								.00	12,471.20
HAND ISSUED TOTAL ***									72,869.10
EFT/EPAY TOTAL ***									357,628.93
TOTAL EXPENDITURES ****								137,349.52	284,759.83
GRAND TOTAL *****									422,109.35

VEND NO INVOICE NO	SEQ#	VENDOR NAME VOUCHER P.O. NO	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0099999 76200 76200	00	ALEXIS MARLE GILMORE 000145 000145		00 02/04/2022 00 02/07/2022	001-0000-228.30-00 001-0000-228.30-00	BOND REFUND BOND REFUND	CHECK #: 130022 25.00	150.00-
VENDOR TOTAL *							25.00	150.00-
0004340 74699	00	ALL CITY MANAGEMENT SERVICES INC 000194		00 02/11/2022	001-2110-421.31-15	CROSSING GUARD CONTRACT	EFT:	1,820.07
VENDOR TOTAL *							.00	1,820.07
0000056 44075 43433 CM	00	AMERICAN EQUIPMENT CO. 000193 000193		00 02/11/2022 00 02/11/2022	001-3120-431.52-16 001-3120-431.52-16	REPAIR PARTS RETURN BOLTS	EFT: EFT:	325.41 131.55-
VENDOR TOTAL *							.00	193.86
0003151 108051	00	ANCHOR SALES & SERVICE 000193		00 02/11/2022	531-4320-443.43-02	CRANE REPAIR	EFT:	1,561.90
VENDOR TOTAL *							.00	1,561.90
0001986 5198178-01 5189722-02	00	ANIXTER, INC. 000199 000199		00 02/11/2022 00 02/11/2022	501-4130-441.52-31 501-4130-441.52-31	SUPPLIES SUPPLIES	EFT: EFT:	437.90 188.52
VENDOR TOTAL *							.00	626.42
0001773 40762 40762 40762	00	BHC RHODES PI0078 007607 PI0079 007629 PI0080 007630		00 01/27/2022 00 01/27/2022 00 01/27/2022	001-3130-431.31-10 521-4210-442.31-15 531-4310-443.31-15	PROFESSIONAL SERVICES PROFESSIONAL SERVICES PREOFESSONAL SERVICES	EFT: EFT: EFT:	1,111.50 1,111.50 1,111.50
VENDOR TOTAL *							.00	3,334.50
0099999 000053075	00	BOUDJAHROUNE, MOULOUD UT		00 02/04/2022	501-0000-229.00-00	FINAL BILL REFUND	66.64	
VENDOR TOTAL *							66.64	
0003080 11074575	00	CATES HEATING & AIR COND SVC INC 000194		00 02/11/2022	603-3150-431.31-15	HVAC REPAIR	EFT:	589.76
VENDOR TOTAL *							.00	589.76
0000001 313696625 313696625	00 0222 0222	CENTURYLINK 000203 000203		00 02/11/2022 00 02/11/2022	001-3116-431.40-03 001-3120-431.40-03	MONTHLY BILLING MONTHLY BILLING	21.48 39.89	
VENDOR TOTAL *							61.37	
0001643 JAN-22	00	CITY OF EDGERTON 000199		00 02/11/2022	531-4320-443.31-15	TREATMENT OF WASTEWATER	15,866.26	
VENDOR TOTAL *							15,866.26	
0005210 02082022	00	COOPER LAW LLC 000204		00 02/11/2022	001-1330-413.31-02	PRO TEM	EFT:	199.80
VENDOR TOTAL *							.00	199.80
0000601	00	CUSTOM METAL & FABRICATION						

VEND NO INVOICE NO	SEQ#	VENDOR NAME VOUCHER P.O. NO	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0000601 29606	00	CUSTOM METAL & FABRICATION 000199	00	02/11/2022	501-4130-441.52-12	MATERIALS	EFT:	114.33
						VENDOR TOTAL *	.00	114.33
0003716 DP2200333	00	DATAPROSE 000200	00	02/11/2022	604-1320-413.31-15	MONTHLY BILLING	EFT:	7,451.22
						VENDOR TOTAL *	.00	7,451.22
0001557 212825 212856	00	DATCO, INC 000195 000195	00	02/11/2022 02/11/2022	001-2110-421.52-20 001-2120-421.53-02	FACE MASKS EMBROIDERY SHIRTS	575.00 100.00	
						VENDOR TOTAL *	675.00	
0004959 26	00	DIGITAL EARTH CONSULTING LLC 000199	00	02/11/2022	531-4320-443.47-39	SEWAGE SLUDGE DISPOSAL	EFT:	2,798.00
						VENDOR TOTAL *	.00	2,798.00
0003960 165971	00	ELLIOTT EQUIPMENT COMPANY 000199	00	02/11/2022	531-4330-443.52-04	VAC TRUCK FILTER	EFT:	827.73
						VENDOR TOTAL *	.00	827.73
0004946 4469208677 9279570154 2424383255	00 0122000195 0222000201 0222000202	EVERGY 000195 000201 000202	00 00 00	02/11/2022 02/11/2022 02/11/2022	521-4220-442.40-05 521-4220-442.40-05 521-4220-442.40-05	MONTHLY BILLING MONTHLY BILLING MONTHLY BILLING	89.72 4,859.08 17,221.77	
						VENDOR TOTAL *	22,170.57	
0002956 KSKA3145928	00	FASTENAL CO. 000195	00	02/11/2022	001-6120-461.43-02	SUPPLIES	EFT:	10.53
						VENDOR TOTAL *	.00	10.53
0001917 62171 62171	00	FLAME-OUT 000187 000187	00 00	02/11/2022 02/11/2022	001-3120-431.31-15 521-4230-442.31-15	ANNUAL SERVICE FEES ANNUAL SERVICE FEES	EFT: EFT:	240.60 240.60
						VENDOR TOTAL *	.00	481.20
0000086 020364680 020388584	00	GALLS, LLC 000192 000192	00 00	02/11/2022 02/11/2022	001-2120-421.53-02 001-2120-421.53-02	UNIFORMS UNIFORMS	EFT: EFT:	86.36 110.00
						VENDOR TOTAL *	.00	196.36
0099999 000064943	00	HAMM, JASON UT	00	02/10/2022	501-0000-229.00-00	MANUAL CHECK	287.49	
						VENDOR TOTAL *	287.49	
0000201 01220835	00	HASTY AWARDS 000195	00	02/11/2022	001-6110-461.47-53	MEDALS AND ENGRAVING	EFT:	368.88
						VENDOR TOTAL *	.00	368.88
0002095	00	HDR ENGINEERING, INC						

VEND NO INVOICE NO	SEQ#	VENDOR NAME VOUCHER P.O. NO	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0002095 1200407091	00	HDR ENGINEERING, INC PI0083 007904	00	02/08/2022	001-3130-431.31-10	PROFESSIONAL SERVICES	EFT:	1,279.88
						VENDOR TOTAL *	.00	1,279.88
0005183 02062022	00	HENDERSON LAW, LLC 000196	00	02/11/2022	001-1330-413.31-02	PRO TEM PROSECUTOR	EFT:	990.00
						VENDOR TOTAL *	.00	990.00
0000463 MEADOWBROOK PAR	00	HOLIDAY CONTRACTING, INC. PI0076 007858	00	02/07/2022	001-3130-431.31-10	CONCRETE PARKING LOT	EFT:	2,200.00
						VENDOR TOTAL *	.00	2,200.00
0000481 1500332059	00	HOLLIDAY SAND AND GRAVEL 000192	00	02/11/2022	001-3120-431.47-38	SPOILS	EFT:	643.50
						VENDOR TOTAL *	.00	643.50
0000102 691585	00	ICMA RETIREMENT TRUST - 457 000190	00	02/09/2022	721-0000-202.03-04	CONTRIBUTIONS	CHECK #: 101	9,249.77
						VENDOR TOTAL *	.00	9,249.77
0001830 66846 1/22 66846 1/22	00	IMSA 000137	00	02/04/2022	001-3120-431.46-02	MEMBERSHIP IMSA	CHECK #: 19326	270.00-
			00	02/07/2022	001-3120-431.46-02	MEMBERSHIP IMSA	EFT:	200.00
						VENDOR TOTAL *	.00	70.00-
0002775 203223	00	INTERSTATE ELECTRICAL SUPPLY, INC 000191	00	02/11/2022	521-4220-442.52-12	LED AND SOCKETS	EFT:	260.00
						VENDOR TOTAL *	.00	260.00
0004271 GGXZ107	00	IRON MOUNTAIN INC 000197	00	02/11/2022	001-1150-411.31-15	SHREDDING SERVICES	EFT:	73.03
						VENDOR TOTAL *	.00	73.03
0000982 33741	00	J & A TRAFFIC PRODUCTS LLC 000196	00	02/11/2022	001-3120-431.52-10	GUARD RAIL REFLECTORS	EFT:	347.50
						VENDOR TOTAL *	.00	347.50
0000884 0055082	00	JAMAR TECHNOLOGIES, INC 000196	00	02/11/2022	001-3130-431.52-20	TRAFFIC COUNTER SUPPLIES	EFT:	166.25
						VENDOR TOTAL *	.00	166.25
0099999 16405 MUSTANG S	00	JAMES AND SANDRA THORNTON TRUST 000187	00	02/11/2022	001-1130-411.58-00	NRP PROP TAX REBATE	1,871.10	
						VENDOR TOTAL *	1,871.10	
0000777 2022 A TAX FUND	00	JOHNSON COUNTY MENTAL HLTH CTR 000202	00	02/11/2022	125-1120-411.49-04	PREVENTION SERVICES	EFT:	6,000.00
						VENDOR TOTAL *	.00	6,000.00
0000487	00	KANSAS DEPT OF REVENUE						

VEND NO INVOICE NO	SEQ#	VENDOR NAME VOUCHER P.O. NO	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0000487 140548	00	KANSAS DEPT OF REVENUE 000202	00	02/11/2022	001-1150-411.48-01	CMB LICENSE	25.00	
						VENDOR TOTAL *	25.00	
0002671 161419073	00 0122	KANSAS GAS SERVICE 000206	00	02/11/2022	501-4130-441.40-04	MONTHLY BILLING	1,260.17	
						VENDOR TOTAL *	1,260.17	
0000421 200006076	00	KANSAS MUNICIPAL UTILITIES, INC. 000197	00	02/11/2022	001-1140-411.46-05	CLASSIFIED ADS	EFT:	100.00
						VENDOR TOTAL *	.00	100.00
0000112 2010661	00	KANSAS ONE-CALL SYSTEM, INC. 000197	00	02/11/2022	501-4130-441.40-06	LOCATES	EFT:	8.40
						VENDOR TOTAL *	.00	8.40
0000332 JAN 2022	00	KANSAS STATE TREASURER 000202	00	02/11/2022	001-0000-207.10-17	MONTHLY REMITTANCE	270.00	
JAN 2022		000202	00	02/11/2022	001-0000-207.10-13	MONTHLY REMITTANCE	1,589.00	
JAN 2022		000202	00	02/11/2022	001-0000-207.10-14	MONTHLY REMITTANCE	418.00	
JAN 2022		000202	00	02/11/2022	001-0000-207.10-11	MONTHLY REMITTANCE	251.50	
JAN 2022		000202	00	02/11/2022	001-0000-207.10-12	MONTHLY REMITTANCE	4,812.50	
JAN 2022		000202	00	02/11/2022	001-0000-207.10-15	MONTHLY REMITTANCE	816.50	
JAN 2022		000202	00	02/11/2022	001-0000-207.10-16	MONTHLY REMITTANCE	160.00	
						VENDOR TOTAL *	8,317.50	
0001626 GRDA-GD-22-03	00	KMEA GRDA OPERATING ACCT 000202	00	02/11/2022	501-4120-441.41-01	MONTHLY BILLING	EFT:	281,671.60
						VENDOR TOTAL *	.00	281,671.60
0003399 WAPA-GA-22-02	00	KMEA WAPA OPERATING FUND 000202	00	02/11/2022	501-4120-441.41-01	MONTHLY BILLING	EFT:	5,207.87
						VENDOR TOTAL *	.00	5,207.87
0002489 1632320	00	KPERS 000190	00	02/10/2022	721-0000-202.03-01	021022 PAY PERIOD	CHECK #: 112	41,274.96
						VENDOR TOTAL *	.00	41,274.96
0002490 1632322	00	KPF 000190	00	02/10/2022	721-0000-202.03-02	021022 PAY PERIOD	CHECK #: 113	27,017.42
						VENDOR TOTAL *	.00	27,017.42
0001103 3007383	00	KUTAK ROCK LLP 000197	00	02/11/2022	001-1305-413.31-01	ARBITRAGE 2016A	EFT:	1,500.00
3007386		000197	00	02/11/2022	001-1305-413.31-01	ARBITRAGE 2016C	EFT:	1,500.00
						VENDOR TOTAL *	.00	3,000.00
0004949 L94964	00	LEGAL RECORD, THE 000202	00	02/11/2022	001-1150-411.47-01	TREASURERS REPORT	EFT:	24.11
L94701		000197	00	02/11/2022	521-4220-442.31-15	BID POST	EFT:	34.76

VEND NO INVOICE NO	SEQ#	VENDOR NAME VOUCHER P.O. NO	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0004949 L95020	00	LEGAL RECORD, THE 000199	00	02/11/2022	531-4340-443.62-10	BID POST	EFT:	33.96
VENDOR TOTAL *							.00	92.83
0004956 2022 KACA	00 CONF	MILLER, ALEXIS 000181	00	02/11/2022	001-2130-421.46-01	KACA CONFERENCE	123.90	
VENDOR TOTAL *							123.90	
0099999 000067635	00	MONTES-RIVAS, ELVIS UT	00	02/04/2022	501-0000-229.00-00	FINAL BILL REFUND	6.65	
VENDOR TOTAL *							6.65	
0000132 IN-199272	00	NATIONAL SIGN CO., INC. 000197	00	02/11/2022	001-3120-431.52-10	TOOL FOR SIGNS	EFT:	124.00
VENDOR TOTAL *							.00	124.00
0004957 2022012	00	NEXGRID, LLC 000197	00	02/11/2022	521-4230-442.52-32	CABLE EXTENSIONS	EFT:	364.60
VENDOR TOTAL *							.00	364.60
0000142 168703 00 168741 00 167927 02 168775 00 168302 02	00	OLATHE WINWATER WORKS 000199 000199 000199 000199 000199	00 00 00 00 00	02/11/2022 02/11/2022 02/11/2022 02/11/2022 02/11/2022	521-4230-442.52-12 521-4230-442.52-32 521-4230-442.52-31 521-4230-442.52-12 531-4330-443.52-12	SEALANT LOCKING LID SADDLE REPAIR CLAMP/COPPER DISPENSER GUN	EFT: EFT: EFT: EFT: EFT:	360.00 3,770.00 1,120.00 1,370.00 60.00
VENDOR TOTAL *							.00	6,680.00
0000256 323111 323495 323766	00	OTTAWA COOP 000184 000185 000186	00 00 00 00	02/11/2022 02/11/2022 02/11/2022	001-3120-431.52-09 001-3120-431.52-09 001-3120-431.52-09	DIESEL FUEL DIESEL FUEL DIESEL FUEL	EFT: EFT: EFT:	125.06 179.60 250.00
VENDOR TOTAL *							.00	554.66
0005209 12064	00	OZARK READY MIX 000202	00	02/11/2022	001-3120-431.52-08	SIDEWALK REPAIR	622.75	
VENDOR TOTAL *							622.75	
0001569 INV03170230	00	PAYCOR, INC 000189	00	02/09/2022	001-1310-413.31-15	PAYROLL SERVICES	CHECK #: 107	597.88
VENDOR TOTAL *							.00	597.88
0000302 123121 123121 123121 123121 123121	00	PETTY CASH - CITY HALL 000197 000197 000197 000197 000197	00 00 00 00 00	02/11/2022 02/11/2022 02/11/2022 02/11/2022 02/11/2022	001-1140-411.47-04 001-3116-431.31-15 001-3120-431.31-15 001-6110-461.54-51 604-1320-413.52-20	POSTAGE DUE D.L. REIMBURSEMENT CD RENEWAL SANTA SUIT ALTERATIONS CALENDARS	3.20 36.90 26.75 38.00 3.26	
VENDOR TOTAL *							108.11	
0000220	00	PETTY CASH - POLICE DEPARTMENT						

VEND NO INVOICE NO	SEQ#	VENDOR NAME VOUCHER P.O. NO	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0000220 020422	00	PETTY CASH - POLICE DEPARTMENT 000197	00	02/11/2022	001-2110-421.46-01	QR CODE GENERATOR	83.88	
						VENDOR TOTAL *	83.88	
0002488 12312021 12312021	00	PETTY CASH - UTILITIES 000183 000182	00	02/11/2022 02/11/2022	501-4110-441.46-01 501-4130-441.46-02	CDL LICENSE AND PARKING CDL LICENSE AND PARKING	23.00 26.75	
						VENDOR TOTAL *	49.75	
0005111 5/21-124	00	SK DESIGN GROUP, INC. PI0081 007680	00	01/24/2022	401-6120-461.62-23	PROFESSIONAL SERVICES	EFT:	3,890.00
						VENDOR TOTAL *	.00	3,890.00
0004785 3116171	00	SUMNERONE, INC 000198	00	02/11/2022	602-1340-413.43-02	MONTHLY BILLING	EFT:	635.93
						VENDOR TOTAL *	.00	635.93
0000174 165902 162553 164943 164944 164949 164951 165891 165903 165900	00	TAPCO PRODUCTS CO. 000187 000187 000187 000187 000187 000187 000187 000187 000187	00	02/11/2022 02/11/2022 02/11/2022 02/11/2022 02/11/2022 02/11/2022 02/11/2022 02/11/2022 02/11/2022	603-3150-431.42-01 603-3150-431.42-01 603-3150-431.42-01 603-3150-431.42-01 603-3150-431.42-01 603-3150-431.42-01 603-3150-431.42-01 603-3150-431.42-01 603-3150-431.42-01	RUG RENTAL RUG RENTAL RUG RENTAL RUG RENTAL RUG RENTAL RUG RENTAL RUG RENTAL RUG RENTAL RUG RENTAL	EFT: EFT: EFT: EFT: EFT: EFT: EFT: EFT: EFT:	241.32 18.90 18.90 47.30 35.40 55.30 90.52 58.20 184.49
						VENDOR TOTAL *	.00	750.33
0005194 6086	00	TIDD TREE PI0077 007888	00	02/07/2022	001-3120-431.31-15	TREE TRIMMING	EFT:	6,100.00
						VENDOR TOTAL *	.00	6,100.00
0003505 2022 PMT	00	UNITED COMMUNITY SERVICES-HSF 000187	00	02/11/2022	001-1110-411.54-93	2022 HSF FULL PAYMENT	EFT:	6,600.00
						VENDOR TOTAL *	.00	6,600.00
0000238 871930	00	USA BLUE BOOK PI0082 007830	00	02/08/2022	001-3120-431.52-08	ALUMINUM CURB MARKER	EFT:	8,353.87
						VENDOR TOTAL *	.00	8,353.87
0000289 14618	00	VIKING INDUSTRIAL SUPPLY 000187	00	02/11/2022	001-6120-461.52-01	CLEANING SUPPLIES	EFT:	659.20
						VENDOR TOTAL *	.00	659.20
0000366 020522 STMT	00	WARDROBE CLEANERS INC. 000192	00	02/11/2022	001-2120-421.42-02	DRY CLEANING	374.00	
						VENDOR TOTAL *	374.00	
						HAND ISSUED TOTAL ***		77,720.03

VEND NO	SEQ#	VENDOR NAME		BNK	CHECK/DUE	ACCOUNT	ITEM	CHECK	EFT, EPAY OR
INVOICE		VOUCHER	P.O.		DATE	NO	DESCRIPTION	AMOUNT	HAND-ISSUED
NO		NO	NO						AMOUNT

0000366	00								
							EFT/EPAY TOTAL ***		357,528.01
							TOTAL EXPENDITURES ****	51,995.14	435,248.04
						GRAND TOTAL	*****		487,243.18

COUNCIL ACTION FORM

CONSENT AGENDA ITEM NO. 3

MEETING DATE: FEBRUARY 21, 2022

STAFF CONTACT: MATTHEW WOLFF, FINANCE DIRECTOR

Agenda Item: Consider authorizing an agreement with the Southwest Johnson County Economic Development Corporation

Strategic Priority: Promote Economic Development

Department: Finance

Staff Recommendation:

Staff recommends authorizing an agreement with the Southwest Johnson County Economic Development Corporation (SWJCEDC) and the distribution of funds.

Background/Description of Item:

On January 4, 2021, City Council authorized the execution of an agreement with the SWJCEDC. The one-year agreement provided funding of \$90,000 to the EDC for economic development services for 2021. All funding came from transient guest tax revenue in the city's Economic Development Fund.

The proposed agreement for 2022 keeps the funding amount the same as the prior year at \$90,000. The EDC's budget request was included in the approved 2022 Budget.

Financial Impact:

The City shall pay the EDC the sum of \$90,000, payable at a quarterly rate of \$22,500. All funding will come from transient guest tax revenue in the Economic Development Fund.

Attachments included:

- Southwest Johnson County EDC Agreement
- Southwest Johnson County EDC 2022 Work Plan

Suggested Motion:

Authorize the City Administrator to execute an agreement with Southwest Johnson County Economic Development Corporation for economic development services for one year, ending December 31, 2022, in the amount of \$90,000

AGREEMENT

THIS CONTRACT FOR ECONOMIC DEVELOPMENT SERVICES ("Renewal") is made and entered into as of this 21st day of February, 2022, by and between the City of Gardner, Kansas (the "City") and the Southwest Johnson County Economic Development Corporation (the "EDC"), a Kansas not-for-profit corporation.

The EDC has been organized by representatives of the business community and certain government agencies in and around the greater Southwest Johnson County, Kansas for the purpose of promoting economic growth in the area, and

The City of Gardner desires to procure from the EDC certain services in support of the City's plan for continued economic development and growth as depicted by the City adopted plans and studies such as the Economic Development Strategy; Comprehensive Plan; Main Street Corridor Plan and Market Analysis; and Destination Downtown Plan, as well as current economic development policies and programs.

Therefore, in consideration of the mutual covenants herein contained the parties agree as follows:

1. **SERVICES.** The EDC agrees to provide, through its professional staff, the following services to the City:

a. **MARKETING.** The EDC shall provide support to the City and its staff in marketing the business advantages to potential corporate residents, which support shall include, but is not limited to, market research, accumulation of data concerning prospective tenants, development and distribution of marketing materials, attendance at trade shows, conventions and other events where appropriate market intelligence can be gained, and other activities deemed appropriate by the parties. The EDC shall initiate such activities as it deems appropriate to ensure that the City is well represented in the commercial and industrial real estate market both regionally and nationally.

b. **EXISTING BUSINESS RELATIONS.** The EDC, through its professional staff, shall assist the City and its staff in establishing and maintaining relationships with the existing businesses, to assist those businesses in developing and expanding their facilities at the City and to identify and pursue potential linkages with other businesses who may be candidates for locating to the City. EDC staff shall specifically and purposefully offer its services to each and every business in the City. The EDC shall develop a means of annually contacting the managers of these businesses informing them about the services available through the EDC. EDC staff shall annually survey these businesses to update information about expansion opportunities.

c. **BUSINESS RECRUITMENT.** The EDC shall initiate an aggressive program to identify and recruit new businesses to the City. The EDC shall undertake specific efforts to identify target businesses by industry and by name, to inform those businesses of the opportunities for locating to the City, and to follow-up with qualified prospects in order to prepare development proposals. EDC staff shall participate in joint efforts at the local, regional

and state levels to recruit new businesses to the City.

d. DEVELOPMENT PROPOSALS. EDC staff shall assist existing businesses and prospective new businesses in preparing development proposals for the consideration of the City. EDC staff shall become familiar with every aspect of economic development as it applies to the City, and shall develop an understanding of the City's objectives in developing the commercial and industrial sectors of the City. EDC staff shall act as facilitator for prospective business development and shall assist in the presentation of the development proposal to the various jurisdictions having oversight on the development in the City. EDC staff shall strive to develop a "one-stop shopping" approach for development proposals so that a proponent of a project can get virtually all of his or her questions answered by or through the EDC staff.

2. PERFORMANCE STANDARDS. The EDC shall establish a plan of work in which the specific activities to be performed by the EDC staff are delineated. Such plan of work shall specifically address the nature and scope of services to be provided to the City and shall establish performance criteria by which the EDC staff's individual performance will be measured. Such plan of work shall be prepared annually and shall be subject to the approval of the City Administrator and Governing Body prior to adoption by the board of directors of the EDC.

The President / CEO of the EDC will serve as an ex-officio member of the Economic Development Advisory Committee (EDAC) at the City and attend all scheduled Quarterly EDAC Meetings. At such meetings the EDC President / CEO will be provided time to report on Work Plan progress and during the 4th Quarter meeting(s) will work with the EDAC members to identify potential work plan items for consideration by the Governing Body and potential inclusion in the upcoming Work Plan year.

President / CEO will meet quarterly with city staff (City Administrator / Finance Director / Community Development Director) and the President / CEO of the Gardner Chamber of Commerce.

Additionally, the EDC will provide written progress reports on the annual work plan to the City Administrator in April and October. The President / CEO will provide verbal progress reports at the 2nd regular City Council Meetings in April and October.

3. COMPENSATION. In consideration of the services to be provided by the EDC, the City shall pay to the EDC the sum of \$90,000, payable at the rate of \$22,500 per each fiscal quarter of the calendar year. The EDC shall prepare an invoice for each quarterly payment and submit such invoice to the City 30 days prior to the scheduled payment.

4. TERM. The term of this agreement shall be for one year commencing on February 21, 2022, and terminating on December 31, 2022.

5. RENEWAL. This agreement may be renewed annually by mutual agreement of the parties.

6. NO AGENCY RELATIONSHIP. Notwithstanding anything to the contrary contained in this Agreement, the EDC and its employees shall not hold itself or themselves out as, and shall not be, an agent for the City. Neither the EDC nor its employees shall have authority to enter into agreements,

leases, or other commitments on behalf of the City.

7. **INDEMNITY.** Each party to this agreement agrees to and shall defend and hold harmless the other for the negligent acts and omissions of such party and its agents, employees and contractors, provided, however, nothing herein shall be construed as a waiver by either party of any limitation of liability provided under the Kansas Tort Claims Act.

8. **INSURANCE.** The EDC shall be solely responsible for obtaining all insurance coverages that it deems necessary or desirable in connection with its business and its obligations under this Agreement, including, but not limited to, general liability, workers compensation, and automobile liability coverage.

9. **TERMINATION.** In the event one party breaches this Agreement the other party may declare this Agreement in default. The non-breaching party may terminate this Agreement upon thirty days notice to the breaching party and this Agreement shall thereafter terminate unless the default is cured within such thirty days.

10. **DUTIES UPON EXPIRATION OR TERMINATION.** It is acknowledged and agreed that in the course of performing its obligations under this Agreement the EDC will compile and prepare certain market information, client lists, data bases and other information relating to the City operations, businesses, prospective businesses, and other information, all of which shall become the property of the City upon the expiration or earlier termination of this Agreement. EDC agrees to deliver to the City all such information not later than the fifth business day following the expiration or earlier termination of the Agreement. All such information shall be kept confidential by EDC following the expiration or earlier termination of this Agreement and EDC agrees not to disclose such information to any third party except as required by law.

11. **FUNDING.** The parties acknowledge that the EDC's ability to fulfill the terms of this Agreement is contingent upon continued funding by its members, and that such funding is currently primarily comprised of voluntary contributions. EDC shall make reasonable efforts to gain continuing financial support through expanded membership and through other funding sources, such as grants-in-aid and service contracts with other agencies and organizations.

IN WITNESS WHEREOF, the parties hereto have set their hand this February 21, 2022 at Johnson County, Kansas.

SOUTHWEST JOHNSON COUNTY
ECONOMIC DEVELOPMENT CORP.

CITY OF GARDNER, KANSAS

President

Jim Pruetting, City Administrator

City of Gardner 2022 Work Plan

Represent Gardner in all internal and external generated prospect activity- \$10K

- Respond to all prospect inquiries
- Lead prospect site and community tours
- Develop proposal preparations and presentations
- Assist in incentive evaluations and preparations/negotiations
- Provide reports on volume, types and outcomes

Metric

- Quarterly report detailing activities emailed to Council, CA & E.D.

Business Retention & Expansion Program - \$10K

- Meet with larger Gardner companies to build relationships, identify issues and opportunities
- Alert staff prior to meeting and invite staff to participate if available
- Create and manage Workforce Solutions Roundtable to identify and solve issues pertaining to attracting and retaining a quality workforce

Metric

- Complete 5 business retention/expansion calls for 2022. There will be outreach to every large business tenant with an emphasis on face-to-face meetings with companies employing more than 50 employees on an annual basis
- Utilize social media to promote and existing business
- Host bi-annual Workforce Solutions Roundtable meetings
- Post jobs on Facebook Workforce Solutions Page

Data Management - \$15K

- Enhance site data marketing pieces and videos for individual properties within SWJOCO
- Feature available sites/buildings on social media
- Maintain up-to-date data on LocationOne Information System (LOIS)
- Represent SWJOCO on CERI Board of Directors
- Update SWJOCO EDC website and Facebook page for content updates

Metric

- Update and enhance site marketing pieces for existing sites as needed
- Feature one available site each month; Will be shared on SWJOCO EDC sites
- Provide monthly CERI data to Council, CA & E.D.

Business Recruitment and Marketing - \$ 55K

- Host annual Developer's Expo to promote SWJOCO to development community
 - Bus Tour in 2022
- Present SWJOCO economic development updates to brokerage firms (CBRE, NG Zimmer, etc.)
- Provide community familiarization tours for key partners—KCADC, KDOC, Brokers
- Utilize Evergy community partners program to assist with program expenses (site videos, website, training)
- Participate with KCADC and/or KDOC on consultant/industry recruitment missions
- Promote retail and service industry opportunities at International Council of Shopping Centers (ICSC) Convention – May
 - ICSC Las Vegas in 2022
- Market site opportunities to hotel developers
 - Participate in KC Lodging Association event – Fall 2022
- Enhance community communication by meeting as needed with public information officers from the City of Gardner and Gardner-Edgerton USD 231

Metric

- Host Developer's Expo in October – Bus Tour of SWJOCO
- 5 quarterly brokerage firm presentation
- Two quarterly familiarization tours for partners or as needed
- Apply for Evergy funds for three pertinent economic development activities
- Participate on two KCADC recruitment missions and/or local consultant tours
- Attend International Council of Shopping Centers Convention – Las Vegas
- Host Public Information Officer meetings as needed
- Update & enhance site marketing collateral
- Continue work with Next Move Group and candid Aviation related marketing
 - Attend HAI-HELI Expo in March
 - MRO Expo in April

COUNCIL ACTION FORM

CONSENT AGENDA ITEM NO. 4

MEETING DATE: FEBRUARY 21, 2022

STAFF CONTACT: GONZ GARCIA, UTILITIES DIRECTOR

Agenda Item: Consider authorizing the execution of contracts to purchase chemicals for the Hillsdale Water Treatment Plant

Strategic Priority: Infrastructure and Asset Management

Department: Utilities – Water Division

Staff Recommendation:

Staff recommends authorizing the City Administrator to execute contracts to purchase chemicals for water treatment up to a combined total amount estimated at \$354,670.00 with G2O Technologies, Brenntag Mid-South, DPC Industries, Inc., Calgon Carbon Corp. and Polydyne Inc.

Background/Description of Item:

The Hillsdale Water Treatment Plant expansion project was completed in 2021. Included with this project, there were various upgrades to existing chemical systems and new treatment trains were introduced into the treatment process. Staff last bid chemicals in 2018. Those costs were held over for four years, ending in 2021. Additionally, some of the chemicals used in the treatment process have been modified for the expansion project.

A Request for Proposals (RFP) was advertised on the city's website, Drexel website and *The Legal Record*. Staff received seven (7) proposals from chemical suppliers, with six (6) meeting or exceeding requirements outlined in the RFP.

Staff reviewed the proposals based on initial costs, programmed increases through 2026, and delivery methods. All apparent low bidders for each of the nine (9) chemicals were determined to meet or exceed the treatment requirements and are shown in the table below.

2022-2026 Hillsdale WTP Chemical Contract				Apparent Low Bidder			
Bid Opening January 14, 2022							
ITEM	DESCRIPTION	UNIT	QUANTITY	COMPANY	ANNUAL INCREASE	2022	
No.						UNIT PRICE	EXTENSION
1	ACH	lbs	225,000	G2O Technologies	Negotiable	\$0.49	\$110,250
2	Caustic Soda	lbs	180,000	Brenntag Mid-South	35%	\$0.1598	\$28,764
3	Hydrofluosilicic Acid	lbs	20,000	Brenntag Mid-South	10%	\$0.38	\$7,500
4	Chlorine	lbs	34,000	DPC	25%	\$0.799	\$27,166
5	Ammonia Sulfate	lbs	40,000	DPC	10%	\$0.52	\$20,800
6	Activated Carbon	lbs	40,000	Calgon Carbon	10%	\$1.20	\$48,000
7	Sodium Permanganate	lbs	72,000	Brenntag Mid-South	10%	\$1.30	\$93,240
8	Solution Cationic Polymer	lbs	25,000	Polydyne, Inc	10%	\$0.61	\$15,250
9	Dry Anionic Polymer	lbs	2,000	Polydyne, Inc	10%	\$1.85	\$3,700
						Total:	\$354,670

Financial Impact:

Funds are available in the in the Water Treatment Budget.

Attachments:

- Bid Tabulation

Suggested Motion:

Authorize the City Administrator to execute contracts for the purchase of chemicals for water treatment up to a combined total amount estimated at \$354,670.00 with G2O Technologies, Brenntag Mid-South, DPC Industries, Inc., Calgon Carbon Corp. and Polydyne Inc.

2022-2026 Hillsdale WTP Chemical Contract					Apparent Low Bidder												
Bid Opening January 14, 2022																	
ITEM No.	DESCRIPTION	DELIVERY UNIT	UNIT	QUANTITY	COMPANY	ANNUAL INCREASE	2022		2023		2024		2025		2026		TOTAL
							UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	EXTENSION
1	ACH – (Basicity 82% - 84%, Al2O3 22% - 24%) or WT4000 or WT4021	Bulk Tanker Loads (Max Limit of one load per order)	lbs	225,000	G2O Technologies	To be Negotiated	\$0.49	\$110,250.00	\$0.49	\$110,250.00	\$0.49	\$110,250.00	\$0.49	\$110,250.00	\$0.49	\$110,250.00	\$551,250.00
2	Caustic Soda, 30% Diaphragm Cell	Bulk Tanker Loads (Max Limit of one load per order)	lbs	180,000	Brenntag Mid-South	35%	\$0.1598	\$28,764.00	\$0.22	\$38,831.40	\$0.29	\$52,416.00	\$0.39	\$70,770.23	\$0.53	\$95,539.81	\$286,321.43
3	Hydrofluosilicic Acid (HFS), (NSF Approved)	NSF Approved 55 gallon barrel	lbs	20,000	Brenntag Mid-South	10%	\$0.38	\$7,500.00	\$0.41	\$8,250.00	\$0.45	\$9,075.00	\$0.50	\$9,982.50	\$0.55	\$10,980.75	\$45,788.25
4	Chlorine	2,000 Pound Cylinders (Max Limit of one cylinder per order)	lbs	34,000	DPC	25%	\$0.799	\$27,166.00	\$1.00	\$33,957.50	\$1.25	\$42,446.88	\$1.56	\$53,058.59	\$1.95	\$66,323.24	\$222,952.21
5	Ammonia Sulfate (NSF Approved)	50 Lb Bags (Max Limit of 80 bags per order)	lbs	40,000	DPC	10%	\$0.52	\$20,800.00	\$0.57	\$22,880.00	\$0.63	\$25,168.00	\$0.69	\$27,684.80	\$0.76	\$30,453.28	\$126,986.08
6	Activated Carbon – (non-Hydrodarco®B or Equal), (NSF Approved)	Bulk Tanker Loads (40,000lbs per load)	lbs	40,000	Calgon Carbon	10%	\$1.20	\$48,000.00	\$1.32	\$52,800.00	\$1.45	\$58,080.00	\$1.60	\$63,888.00	\$1.76	\$70,276.80	\$293,044.80
7	Sodium Permanganate Liquid – 20% (Corus, CARUSOL®) (NSF Approved)	Bulk Tanker Load (24,000lbs per load)	lbs	72,000	Brenntag Mid-South	10%	\$1.30	\$93,240.00	\$1.42	\$102,564.00	\$1.57	\$112,820.40	\$1.72	\$124,102.44	\$1.90	\$136,512.68	\$569,239.52
8	Solution Cationic Polymer. Robins 110, 120, WT 3015 or equal. (NSF Approved)	Packaged in 55 gal drums (Max of 4 drums per order)	lbs	25,000	Polydyne, Inc	10%	\$0.61	\$15,250.00	\$0.67	\$16,775.00	\$0.74	\$18,452.50	\$0.81	\$20,297.75	\$0.89	\$22,327.53	\$93,102.78
9	Dry Anionic Polymer WT 3091, (NSF Approved)	Packaged in bags not to exceed 80 Lbs	lbs	2,000	Polydyne, Inc	10%	\$1.85	\$3,700.00	\$2.04	\$4,070.00	\$2.24	\$4,477.00	\$2.46	\$4,924.70	\$2.71	\$5,417.17	\$22,588.87

	Calgon Carbon											
	ANNUAL INCREASE	2022		2023		2024		2025		2026		TOTAL
Bid On		UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	EXTENSION
6	10%	\$1.20	\$48,000.00	\$1.32	\$52,800.00	\$1.45	\$58,080.00	\$1.60	\$63,888.00	\$1.76	\$70,276.80	\$293,044.80
	Brenntag Mid-South											
	ANNUAL INCREASE	2022		2023		2024		2025		2026		TOTAL
Bid On		UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	EXTENSION
2	35%	\$0.1598	\$28,764.00	\$0.2157	\$38,831.40	\$0.29	\$52,416.00	\$0.3932	\$70,770.23	\$0.5308	\$95,539.81	\$286,321.43
3	10%	\$0.38	\$7,500.00	\$0.41	\$8,250.00	\$0.45	\$9,075.00	\$0.50	\$9,982.50	\$0.55	\$10,980.75	\$45,788.25
4	35%	\$0.83	\$28,152.00	\$1.12	\$38,005.20	\$1.51	\$51,307.02	\$2.04	\$69,264.48	\$2.75	\$93,507.04	\$280,235.74
5	20%	\$0.55	\$22,000.00	\$0.66	\$26,400.00	\$0.79	\$31,680.00	\$0.95	\$38,016.00	\$1.14	\$45,619.20	\$163,715.20
7	10%	\$1.2950	\$93,240.00	\$1.42	\$102,564.00	\$1.57	\$112,820.40	\$1.72	\$124,102.44	\$1.90	\$136,512.68	\$569,239.52
8	10%	\$0.73	\$18,125.00	\$0.80	\$19,937.50	\$0.88	\$21,931.25	\$0.96	\$24,124.38	\$1.06	\$26,536.81	\$110,654.94
9	15%	\$2.37	\$4,740.00	\$2.73	\$5,451.00	\$3.13	\$6,268.65	\$3.60	\$7,208.95	\$4.15	\$8,290.29	\$31,958.89

	DPC											
	ANNUAL INCREASE	2022		2023		2024		2025		2026		TOTAL
Bid On		UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	EXTENSION
3	10%	\$0.44	\$8,800.00	\$0.48	\$9,680.00	\$0.53	\$10,648.00	\$0.59	\$11,712.80	\$0.64	\$12,884.08	\$53,724.88
4	25%	\$0.80	\$27,166.00	\$1.00	\$33,957.50	\$1.25	\$42,446.88	\$1.56	\$53,058.59	\$1.95	\$66,323.24	\$222,952.21
5	10%	\$0.52	\$20,800.00	\$0.57	\$22,880.00	\$0.63	\$25,168.00	\$0.69	\$27,684.80	\$0.76	\$30,453.28	\$126,986.08
	G2O Technologies											
	ANNUAL INCREASE	2022		2023		2024		2025		2026		TOTAL
Bid On		UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	EXTENSION
1	To be Negotiated	\$0.49	\$110,250.00	\$0.49	\$110,250.00	\$0.49	\$110,250.00	\$0.49	\$110,250.00	\$0.49	\$110,250.00	\$551,250.00
	Polydyne Inc.											
	ANNUAL INCREASE	2022		2023		2024		2025		2026		TOTAL
Bid On		UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	EXTENSION
8	10%	\$0.61	\$15,250.00	\$0.67	\$16,775.00	\$0.74	\$18,452.50	\$0.81	\$20,297.75	\$0.89	\$22,327.53	\$93,102.78
9	10%	\$1.85	\$3,700.00	\$2.04	\$4,070.00	\$2.24	\$4,477.00	\$2.46	\$4,924.70	\$2.71	\$5,417.17	\$22,588.87
	Shannon Chemical Corporation											
	ANNUAL INCREASE	2022		2023		2024		2025		2026		TOTAL
Bid On		UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	EXTENSION
7	20%	\$2.17	\$156,240.00	\$2.60	\$187,488.00	\$3.12	\$224,985.60	\$3.75	\$269,982.72	\$4.50	\$323,979.26	\$1,162,675.58
	Univar Solutions											
	ANNUAL INCREASE	2022		2023		2024		2025		2026		TOTAL
Bid On		UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	EXTENSION
	Did not provide sufficient bid package.											

COUNCIL ACTION FORM

CONSENT AGENDA ITEM NO. 5

MEETING DATE: FEBRUARY 21, 2022

STAFF CONTACT: GONZ GARCIA, UTILITIES DIRECTOR

Agenda Item: Consider authorizing the execution of a lease contract to replace two specialty vehicles

Strategic Priority: Infrastructure and Asset Management

Department: Utilities – Electric Distribution Division

Board/Commission Recommendation:

On January 6, 2022, the Utility Advisory Commission approved a recommendation to the City Council to execute an agreement with Altec Capital to replace two (2) Small Aerial Lift Trucks in the lease program for four additional years at a monthly lease rate of \$4,053.83 per month (\$48,645.96 per year) per truck excluding taxes, licensing fees, and delivery charges.

Staff Recommendation:

Staff recommends authorizing the execution of an agreement with Altec Capital to replace two (2) Small Aerial Lift Trucks in the lease program for four additional years.

Background/Description of Item:

Currently, the City of Gardner leases six specialty vehicles from Altec Capital Services, including one transmission digger derrick truck, one distribution digger derrick truck, two large aerial lift trucks, and two small aerial lift trucks. The digger derrick trucks and the large aerial lift trucks are on five year leases and the small aerial lift trucks are on four year leases. The current lease agreement with Altec Capital has been very successful and the Electric Division has benefitted significantly from this program. Over the last eleven years, the annual vehicle expenditures have leveled out and repair costs for parts have been eliminated. The only expenses incurred have been Altec mobile service charges and “wear” items, including tires, windshield wipers, fuel, etc.

The two leases for the small aerial lift trucks will expire in December 2022. The lead time to construct these types of specialty vehicles is estimated to be 20 months from date of order. The department would keep the current trucks and would run month to month with the current lease payment until the new trucks arrive.

On November 16, 2021, staff issued an Invitation for Bid for leasing two (2) new small aerial lift trucks. The invitation was published in *The Legal Record*, the Drexel Technologies plan room, and on the city’s website. Staff received one bid, which was opened on December 3, 2021 and is summarized below:

Proposal

Vehicle	Altec Capital
Small Aerial Lift Truck	\$4,053.83 - 48 month warranty

Major Lease Features

Vendor	Total Price	Chassis	Warranty	Preventative Maintenance	FMV Lease Payment Tax included
Altec	\$209,049.00	2023 Dodge 5500	4 year	X	\$4,053.83

Financial Impact:

Funding for the lease agreements are available from the Electric Fund.

Attachments included:

- a. Altec Bid Form
- b. Altec Small Aerial Lift Truck Quote

Suggested Motion:

Authorize the City Administrator to execute an agreement with Altec Capital to replace two (2) Small Aerial Lift Trucks in the lease program for four additional years at a monthly lease rate of \$4,053.83 per month (\$48,645.96 per year) per truck excluding taxes, licensing fees, and delivery charges

**BID FORM**

All Bid Pricing is to be in accordance with all General Conditions, Special Conditions, and Minimum Specifications as stated within this Request for Bid. Failure to complete the following form(s) shall result in your Bid being deemed non-responsive and rejected without any further evaluation.

Bid Tabulation -					
No.	Item	Qty.	Purchase Price	Lease Term 48 Months	FMV Monthly Payment
1	New Small Aerial Lift Truck	1	209,049	4 years	4,053.83

Authorized Signature: [Signature] Date: 12/9/21

Name and Title: Will Bledsoe - Tech. Sales Manager

Subscribed and sworn to before me this 9th day of December, 2021 by Will Bledsoe.

[Signature]
(Signature of Notary Public)

My commission expires: 2-20-23

(seal, if any)





Altec Capital Services
33 Inverness Center Parkway
Suite 200
Birmingham, AL 35242

Estimated Quote for

Date: 12/2/2021

City of Gardner KS

Equipment	Purchase Price	Lease Term	FMV Payment
2023 AT41M Dodge 4x4 with warranties	\$209,049	4 Years	\$3,702.14
Plus sales tax of 9.52% mthly			\$351.69
Total Monthly Payment			\$4,053.83

- * Payment amounts are tied to a treasury index and can change daily.
- * This quote is based on credit approval and rates are subject to change.
- * This quote is valid for 14 days.
- * Documentation fee may apply.

Insurance Requirement:

Physical damage insurance is required on the unit for the value of the unit. \$1,000,000 of liability insurance is also required. Altec Capital Services can offer you Physical Damage coverage at roughly \$9 per thousand per year. Contact your Altec Capital Account Manager for more information.

FMV Lease

A Fair Market Value Lease is designed to be recognized as an operating lease. It allows you to utilize the equipment for the term of the lease and then purchase the equipment at Fair Market Value, continue leasing the equipment on a month-to-month basis, or return the equipment to Altec Capital. (terms and conditions apply) Standard mileage allows for 15,000 miles per year. Altec Capital will be the titled owner during the term of the lease.

Account Manager: Rich Hill
Phone: 816-341-6939
Email: rich.hill@altec.com

COUNCIL ACTION FORM

CONSENT AGENDA ITEM NO. 6

MEETING DATE: FEBRUARY 21, 2022

STAFF CONTACT: KELLEN HEADLEE, PUBLIC WORKS DIRECTOR

Agenda Item: Consider authorizing the execution of an Ownership Authorization letter acknowledging the ownership of a small parcel of land at Gardner Lake

Strategic Priority: Infrastructure and Asset Management
Quality of Life

Department: Public Works

Staff Recommendation:

Staff recommends authorizing the City Administrator to sign an Ownership Authorization letter acknowledging the ownership of a parcel of land at Gardner Lake.

Background/Description of Item:

Ed Colson owns property at 15645 Lake Road 4 at Gardner Lake. He recently had a survey completed so he could consolidate his lots in order to build a new home. As a result of the survey, it was discovered that a small portion of City of Gardner property was located between his lot and the county right-of-way. In order to get the proper set-back required to build his home, he has requested to purchase this excess property from the City of Gardner. The city is currently determining the proper process to handle such property sales. In order for Johnson County to move the project to the next phase, the city needs to provide owner authorization with intent to transfer the land in the near future.

Financial Impact:

None

Attachments included:

- Owner Authorization Form
- Survey showing "Gardner Lake Park" property

Suggested Motion:

Authorize the City Administrator to execute an Ownership Authorization letter acknowledging ownership of the property and providing consent for the Johnson County Zoning Board to move forward with the consolidation of the properties with the understanding that the city will transfer the land to the property owner.



OWNER AUTHORIZATION

I/WE _____, hereby referred to as the
"Undersigned", being of lawful age, do hereby on this ____ day of _____, 20____, make the following
statements, to wit:

1. I/We the Undersigned, on the date first above written, am the lawful, owner(s) in fee simple absolute of the following described real property
See Exhibit A attached hereto and incorporated herein by reference.
2. I/We the undersigned, have previously authorized and hereby authorize _____
_____ (Hereinafter referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the Planning Office of Johnson County, Kansas, _____
_____ (common address) the subject real property, or portion thereof, and which authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process.
3. I/We the Undersigned, hereby agree to protect, defend, indemnify and hold the Board of County Commissioners of Johnson County, Kansas, its officers employees and agents (hereinafter collectively referred to as the 'County'), free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities, whether false, fraudulent, meritless or meritorious, of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character (hereinafter "claims"), in connection with, relating to, or arising directly or indirectly out of this authorization and the actions taken by the Applicant and the County in reliance thereof. I, the Undersigned, hereby further agree to investigate, handle, respond to, provide defense for and defend any such claims at my sole expense and agree to bear all other costs at my sole expense and agree to bear all other costs and expenses related thereto, even if such claims are groundless, false or fraudulent.
4. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

IN WITNESS THEREOF, I, the Undersigned, have set my hand below.

OWNER

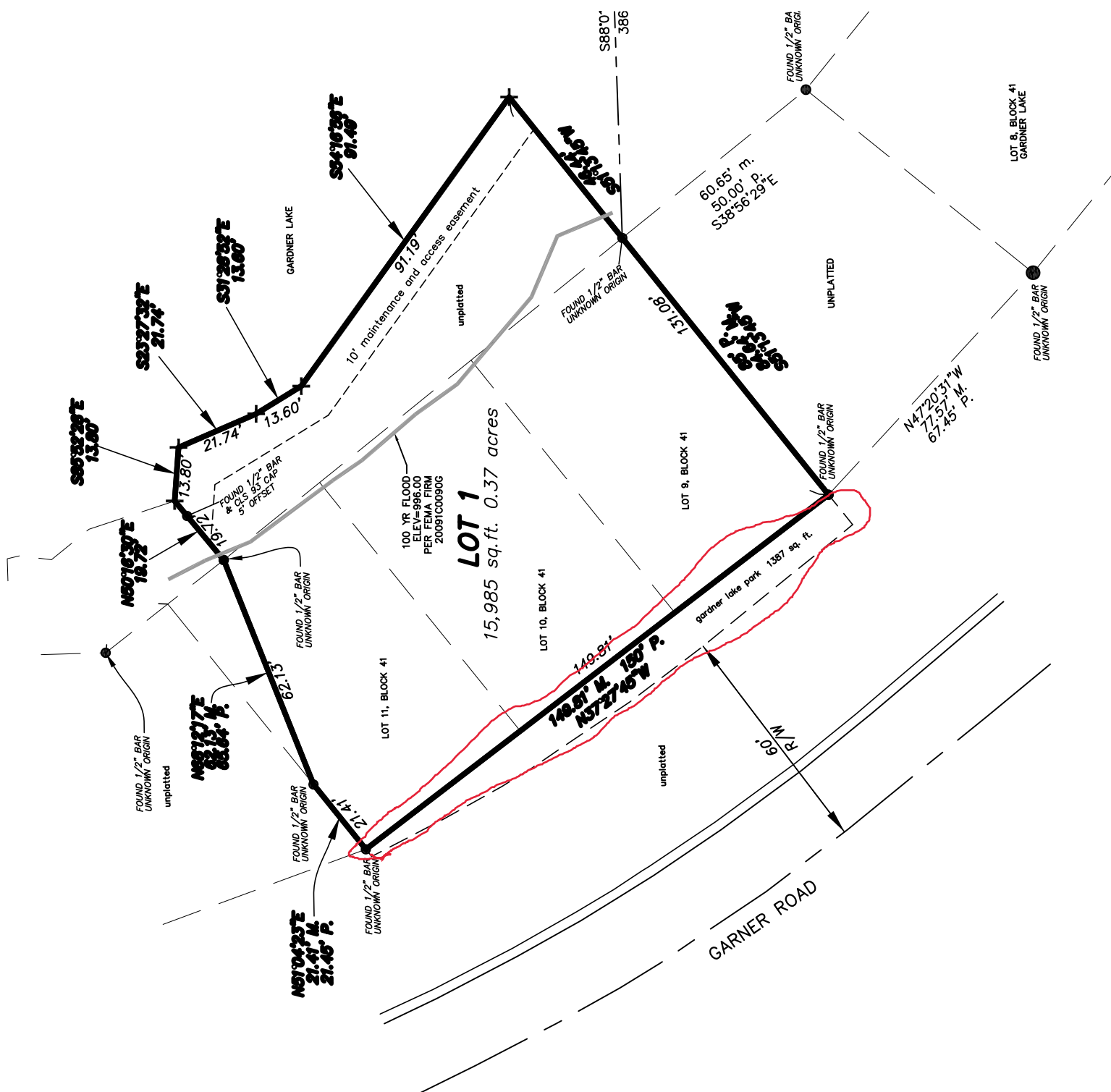
OWNER

STATE OF KANSAS
COUNTY OF JOHNSON

The foregoing instrument was acknowledged before me on this ____ day of _____, 20____,
by _____.

My Commission Expires:

Notary Public _____



COUNCIL ACTION FORM

CONSENT AGENDA ITEM NO. 7

MEETING DATE: FEBRUARY 21, 2022

STAFF CONTACT: TODD WINTERS, MAYOR

Agenda Item: Consider an appointment to the Airport Advisory Board

Strategic Priority: Quality of Life
Infrastructure and Asset Management

Department: Administration

Staff Recommendation:

Consider appointing Gilbert Ludwig to the Airport Advisory Board with a term expiring January 2024.

Background/Description of Item:

There is currently one opening on the Airport Advisory Board. Gilbert Ludwig previously served a partial term on the board, filling a term vacated early. He recently filed for to serve the remainder of the current term vacated by Mr. Fifield. Mayor Winters and the interview committee recommend Mr. Ludwig be appointed with a term expiring January 2024.

Suggested Motion:

Appoint Gilbert Ludwig to serve on the Airport Advisory Board with a term expiring January 2024

COUNCIL ACTION FORM

CONSENT AGENDA ITEM NO. 8

MEETING DATE: FEBRUARY 21, 2022

STAFF CONTACT: KELLEN HEADLEE, PUBLIC WORKS DIRECTOR

Agenda Item: Consider accepting the dedication of right-of-way for the 167th and Kill Creek Intersection Project

Strategic Priority: Infrastructure Management

Department: Public Works

Staff Recommendation:

Staff recommends that City Council accept the dedication of right-of-way for the 167th and Kill Creek Intersection Project.

Background/Description:

The 167th & Kill Creek Intersection Project includes the addition of a left turn lane from 167th Street to Kill Creek Road. One property required right-of-way acquisition to construct the project.

Financial Impact:

The cost of the acquisition will be paid from the Hilltop Ridge Benefit District.

Attachments Included:

- Acquisition documents

Suggested Motion:

Accept the dedication of right-of-way for the 167th and Kill Creek Intersection Project

City of Gardner
Hilltop Ridge Benefit
District
Project Parcel No. 1

AGREEMENT

THIS AGREEMENT is made this 7 day of February, 2022 by and between Lynn A. Johnson and Joan A Johnson Trust, a trust organized and existing under the laws of the State of Kansas, (hereinafter "Seller"), and the City of Gardner, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas (hereinafter "Buyer").

WITNESSETH:

WHEREAS, Seller is the owner of certain real property located generally in the near vicinity of 167th St. and Kill Creek Rd. within the City of Gardner, Johnson County, Kansas, and which is further identified as Johnson County Appraisers' Parcel No. 2F221422-1001 (hereinafter "Seller's Property"); and

WHEREAS, Buyer is undertaking a road reconstruction project in the vicinity of Seller's Property; and

WHEREAS, Buyer has determined it is necessary to acquire certain real property interests from, over and/or upon Seller's Property for such project, as more fully described in Exhibits A and B, which are attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to applicable Kansas statutes, Buyer possesses the right and power of eminent domain to acquire real property and real property interests for its lawful public purposes; and

WHEREAS, in lieu of Buyer's exercise of its right and power of eminent domain, Seller is willing to sell and Buyer is willing to purchase the real property interests described at Exhibit A and B, and by this written Agreement the parties desire and intend to set forth the terms and conditions of their agreement in writing.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Seller agrees to sell and Buyer agrees to purchase the real property and/or real property interests described in Exhibits A and B, which are attached hereto and incorporated herein by reference.

2. Purchase Price. The purchase price for such real property and/or real property interests is **\$12,500.00**.

3. No improvements located within areas to be acquired: The parties agree and acknowledge no improvements are located within the portion of Sellers' Property described at Exhibits A and B.

4. Closing: Contemporaneously to the delivery of this Agreement, Seller agrees to deliver an executed Dedication for Road Right of Way and Temporary Construction Easement to Buyer. Upon delivery of such Instruments to Buyer and Buyer's execution of this Agreement, Buyer shall be entitled to the right of possession and the right to make use of such real property and/or real property interests for their stated purpose. Within thirty (30) days following delivery of the executed documents by Seller, Buyer shall deliver the purchase consideration set forth in Paragraph 2 herein to Seller. Upon delivery of such purchase consideration, Buyer may then file the executed Instruments with the Johnson County Register of Deeds for recording.

5. Closing Costs. Buyer agrees to pay the costs of recording all instruments tendered by Seller.

6. Real Estate Commissions. The parties represent that neither has engaged the services of a real estate agent or broker in relation to this transaction, and that to the best of their respective knowledge no person or entity has a claim for any commission in connection with this transaction. In the event that any person or entity claims a commission from Seller for services provided to Seller in relation to this transaction, such commissions are the sole responsibility of Seller. Seller agrees to indemnify and hold Buyer harmless from and against any and all liability, costs and expenses, including reasonable attorneys' fees, arising out of or pertaining in any manner to any claim for any such commission claimed from Seller. In the event that any person or entity claims a commission from Buyer for services provided to Buyer in relation to this transaction, such commissions are the sole responsibility of Buyer. Buyer agrees to indemnify and hold Sellers harmless from and against any and all liability, costs and expenses, including reasonable attorneys' fees, arising out of or pertaining in any manner to any claim for any such commission claimed from Buyer.

7. Notices. The delivery of any documentation or notices as provided hereunder shall be made with respect to Seller's to Joan Johnson, 2326 Crabtree Drive, Centennial, Colorado, 80121; and with respect to Buyer c/o Seth Gotchey 120 E. Main Street, Gardner, Kansas, or at such other places as the parties shall hereinafter designate in writing.

8. Additional Terms: Each party agrees, acknowledges, warrants and represents:

- (a) The foregoing recitals are true, correct, constitute the intent of the parties, and are incorporated by reference into the terms of this Agreement; and
- (b) the consideration herein expressed is contractual and not a mere matter of recital; and

- (c) no promise or agreement not expressed in this Agreement or the Addendum has been made by the parties, and any amendments or modifications to this Agreement shall be in made in writing; and
- (d) all prior oral or written statements relating to the subject matter of this Agreement are merged into this writing; and
- (e) they have carefully read the foregoing Agreement and know the contents thereof and have signed the same as their own free act; and
- (f) in executing this Agreement, they do not rely on any statement or representation made by the other or their respective agents, attorneys or employees, but they rely solely upon their own judgment; and
- (g) the person executing this Agreement has been duly authorized by all requisite corporate or other entity action, if applicable, and no other proceedings on the part of the party on whose behalf they execute this Agreement are necessary to authorize this Agreement and the conveyances contemplated hereby; and
- (h) this Agreement may be signed in multiple counterparts, which when collected and assembled by Buyer shall constitute the entire agreement; electronic copies with notarized signatures shall be considered the same as the original; and
- (i) each shall cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and conditions of this Agreement; and
- (j) this Agreement shall be binding upon the heirs, successors and assigns of both parties; and
- (k) this Agreement shall be construed and interpreted in accordance with the laws of the state of Kansas.

IN WITNESS WHEREOF, the said parties have hereto set their hands the day and year first above written.

[Remainder of page intentionally blank, signature pages follow.]

SELLER: Lynn A Johnson and Joan A Johnson
Trust

Joan A. Johnson
By: Joan Johnson
Managing Member

ACKNOWLEDGMENT

STATE OF Colorado)
)SS.
COUNTY OF Arapahoe)

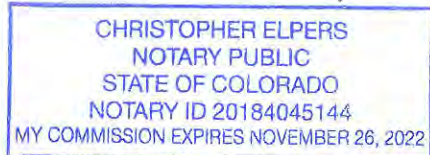
BE IT REMEMBERED that on this 7th day of February, 2022, before me, the undersigned, a notary public in and for the county and state aforesaid, came Joan Johnson, who being by me duly sworn, did state he is the duly-appointed Managing Member of Lynn A Johnson and Joan A Johnson Trust, a trust organized and existing under the laws of the state of Kansas, and that said instrument was signed in behalf of said limited liability company pursuant to authority given by its Members, and who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Ce

Notary Public

My appointment expires: 11/26/2022



[Remainder of page intentionally blank, additional signature page follows.]

BUYER: The City of Gardner, Kansas

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF KANSAS)
)SS.
COUNTY OF JOHNSON)

BE IT REMEMBERED that on this _____ day of _____, 2022, before me, the undersigned, a notary public in and for the county and state aforesaid, came _____, who being by me duly sworn, stated he is the duly-appointed _____ of the City of Gardner, Kansas, a municipal corporation organized and existing under the laws of the state of Kansas, and that the above and foregoing was signed on behalf of said City pursuant to authority given by its governing body, and who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My appointment expires:

[Remainder of page intentionally blank, Exhibits follow.]

Exhibit "A"

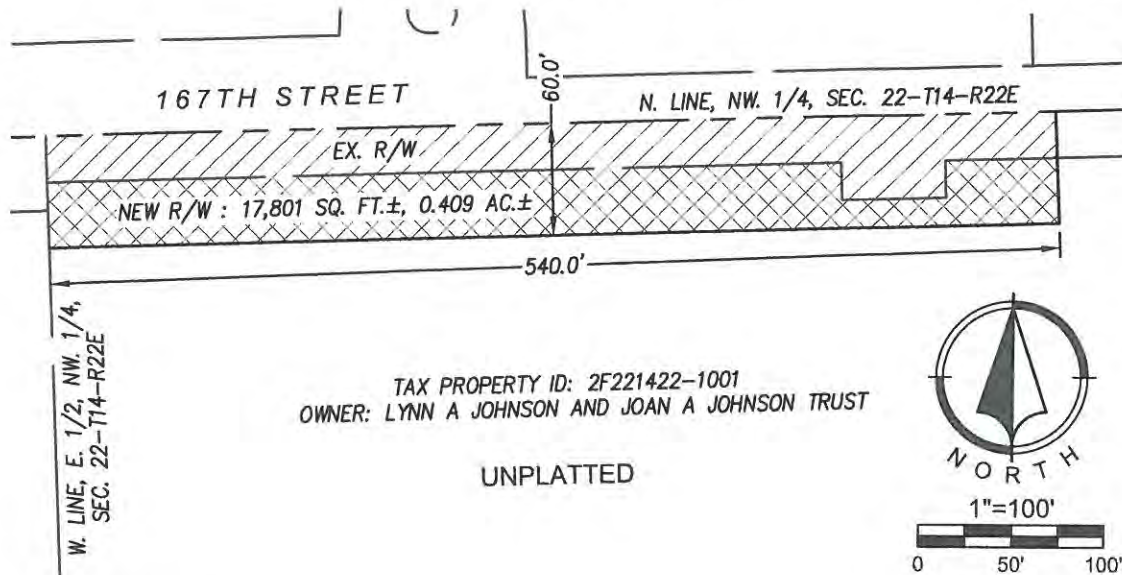
Legal Description of the Real Property subject to Dedication for Road Right of Way

All of the North 60.00 feet of the West 540.00 feet of the East Half of the Northwest Quarter of Section 22, Township 14 South, Range 22 East, in Johnson County, Kansas, LESS that part lying in existing road right-of-way, containing a net area of 17,801 square feet or 0.409 acres, more or less., and as depicted in the Survey Sheet attached hereto as Exhibit B.

[Remainder of page intentionally blank, Exhibit B follows.]

Right-of-Way Dedication

Exhibit B



New Right-of-Way Description

All of the North 60.00 feet of the West 540.00 feet of the East Half of the Northwest Quarter of Section 22, Township 14 South, Range 22 East, in Johnson County, Kansas, LESS that part lying in existing road right-of-way, containing a net area of 17,801 square feet or 0.409 acres, more or less.

I hereby certify that this Right-of-Way description is true and correct to the best of my professional knowledge and belief and was prepared by me or under my direct supervision.



Chris R. Sprague, Kansas PS-1632
RIC KS CLS-234
csprague@ric-consult.com



132 Abbie Avenue
Kansas City, Kansas 66103

913.317.9500
www.ric-consult.com

COUNCIL ACTION FORM

NEW BUSINESS ITEM NO. 1

MEETING DATE: FEBRUARY 21, 2022

STAFF CONTACT: MATTHEW WOLFF, FINANCE DIRECTOR

Agenda Item: Consider adopting a resolution approving the execution and delivery of a Second Amended and Restated Development Agreement for a development project within the City (GRATA Development)

Strategic Priority: Promote Economic Development, Fiscal Stewardship, Quality of Life

Department: Finance

Staff Recommendation:

Staff recommends adopting a resolution approving the execution and delivery of a Second Amended and Restated Development Agreement for a project within the City (GRATA Development).

Background/Description of Item:

At the October 19, 2020 meeting, Council adopted Resolution No. 2068 authorizing the execution and delivery of a first amended and restated development agreement with GRATA Development (Developer) for a mixed-use development located at 175th Street and Clare Road.

The proposed resolution would authorize the execution and delivery of a Second Amended and Restated Development Agreement (2nd A&R Development Agreement) for the project. The 2nd A&R Development Agreement makes various changes, including the following:

1. Removes the Developer's de-annexation remedy
2. Removes the issuance of CID bonds and the payment of associated interest
3. Increases the Common CID Cap to allow additional reimbursable expense in lieu of interest
4. Clarifies infrastructure milestones in regards to phasing

The city's bond counsel, Tyler Ellsworth of Kutak Rock, will provide an overview of the proposed resolution and the Second Amended and Restated Development Agreement.

Financial Impact:

Increases to the Common CID Cap to allow additional reimbursable expense in lieu of interest is considered a neutral change to the overall level of incentives granted to the developer. The Common CID Cap was previously \$11,000,000 plus interest. The Common CID Cap is now being adjusted to \$17,200,000 to account for an equivalent value of reimbursable expenses in lieu of the projected interest.

Attachments:

- Resolution No. 2101
- Second Amended and Restated Development Agreement (GRATA Development)

Suggested Motion:

Adopt Resolution No. 2101, a resolution of the City of Gardner, Kansas, approving the execution and delivery of a Second Amended and Restated Development Agreement for a development project within the City (GRATA Development)

RESOLUTION NO. 2101

A RESOLUTION OF THE CITY OF GARDNER, KANSAS, APPROVING THE EXECUTION AND DELIVERY OF A SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR A DEVELOPMENT PROJECT WITHIN THE CITY (GRATA DEVELOPMENT, LLC).

WHEREAS, the City of Gardner, Kansas (the “City”), is a duly organized city, created, organized and existing under the laws of the State of Kansas (the “State”);

WHEREAS, pursuant to Resolution Nos. 2030 and 2068, adopted by the Governing Body of the City on October 7, 2019, and October 19, 2020, respectively, the City previously entered into a Development Agreement dated as of October 7, 2019, by and between the City and Grata Development, LLC (the “Developer”), as amended and restated by a First Amended and Restated Development Agreement dated as of October 19, 2020, by and between the City and the Developer (collectively, the “Existing Agreement”), for the development of certain commercial and residential improvements, along with certain related infrastructure (collectively, the “Project”), generally located south of 175th Street and between Interstate 35 and Clare Road within the City; and

WHEREAS, the City and the Developer have determined it necessary and desirable to enter into a Second Amended and Restated Development Agreement (the “Second A&R Development Agreement”), by and between the City and the Developer, to amend and restate the Existing Agreement to remove the Developer’s de-annexation remedy, remove provisions regarding the issuance of community improvement district revenue bonds and the payment of associated interest, increase the Developer’s costs which are reimbursable from community improvement district sales tax, and clarify milestones for completing certain infrastructure for the Project;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS, AS FOLLOWS:

Section 1. The City is hereby authorized to enter into the Second A&R Development Agreement in substantially the form presented to and reviewed by the Governing Body on the date of this Resolution (copies of this document are on file in the records of the City) with such changes therein as shall be approved by the Mayor, with the Mayor’s signature thereon being conclusive evidence of his approval thereof, and the same are hereby approved in all respects.

Section 2. The Mayor, City Clerk, and other officers and representatives of the City are hereby authorized and directed to execute, seal, attest and deliver the Second A&R Development Agreement and such other documents, certificates and instruments as may be necessary and desirable to carry out and comply with the intent of this Resolution, for and on behalf of and as the act and deed of the City.

Section 3. This Resolution shall be in full force and effect from and after its adoption.

[remainder of page left blank intentionally]

ADOPTED by the Governing Body of the City of Gardner, Kansas on February 21, 2022.

CITY OF GARDNER, KANSAS

(Seal)

Mayor

ATTEST:

City Clerk

SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “Agreement”), is made and entered into as of _____, 2022 (the “Effective Date”) by and between the **CITY OF GARDNER, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “City”) and **GRATA DEVELOPMENT, LLC**, a Kansas limited liability company (the “Developer”), pursuant to Resolution No. ____ adopted by the Governing Body of the City on February 21, 2022. This Agreement amends and restates in its entirety that certain First Amended and Restated Development Agreement, dated as of October 19, 2020, by and between the City and the Developer.

RECITALS

A. Day3, LLC, a Missouri limited liability company (“Project Site Owner”), owns, or as of August 21, 2019, did own, certain real property which is located in the City and is generally located southeast of Interstate 35 and 175th Street, as legally described on **Exhibit A** and generally depicted on **Exhibit B**, as attached hereto (the “Project Site”).

B. The Developer wishes to improve or cause to be improved the Project Site by designing, developing and constructing certain commercial, single-family residential, and multifamily residential buildings, parking improvements, and other improvements as more particularly set forth in Section 2.01 below (collectively, the “Project”).

C. On or about August 21, 2019, Day3, LLC, as the sole owner of the Project Site at such time, submitted a Consent for Annexation petitioning to annex the Project Site into the City on the condition that the Developer and the City agree on the form of a Development Agreement for development of the Project Site, with the Governing Body of the City approving such agreement on or before October 21, 2019.

D. On September 3, 2019, the Governing Body of the City passed Ordinance No. 2622 annexing the Project Site into the City.

E. To facilitate development of the Project, the Developer will finance and construct certain infrastructure as more particularly set forth in Section 2.01(c) below (the “Developer Infrastructure Improvements”).

F. In addition, the Developer has requested, and the City has agreed, that the City construct certain other infrastructure to facilitate development of the Project as more particularly set forth in Section 2.01(d) below (the “City Infrastructure Improvements”).

G. The City has the authority to create community improvement districts pursuant to K.S.A. 12-6a26 *et seq.*, as amended from time to time (the “CID Act”), for the purpose of financing certain economic development projects. Under the CID Act, the owners of the land within the boundaries of a proposed community improvement district may petition the City to request the creation of a community improvement district and to impose special assessments and/or community improvement district sales tax to pay for or reimburse the costs of a community improvement district project.

H. The Developer intends to request, and the City has agreed to consider, the creation of multiple community improvement districts to finance portions of the Developer Infrastructure Improvements, City Infrastructure Improvements, and the Project as more particularly set forth in Article III hereof.

I. Developer also intends to request, and the City agrees to consider, the issuance by the City of multiple series of industrial revenue bonds (“IRBs”) for the purposes of: (1) obtaining an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment and furnishings for certain commercial buildings and multifamily residential buildings within the Project; and (2) obtaining a partial abatement of ad valorem property taxes on certain multifamily residential buildings within the Project, all as more particularly set forth in Article IV hereof.

J. The Developer has also requested, and the City has agreed to, certain credits to the excise tax imposed by the City in order to offset a portion of the cost of the Developer Infrastructure Improvements as more particularly set forth in Section 2.06 below.

H. The parties agree that the Project is not financially feasible without the public-private partnership as set forth in this Agreement, and therefore the parties wish to enter into this Agreement to provide the necessary financing for the Project, Developer Infrastructure Improvements, and City Infrastructure Improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Incorporation of Recitals. The parties understand and agree that the Recitals set forth above are hereby incorporated as though more fully set forth herein.

Section 1.02. Definitions of Words and Terms. Capitalized words used in this Agreement which are not otherwise defined herein shall have the meanings set forth in the Annex of Definitions attached hereto.

Section 1.03. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

(a) The terms defined in the body of this Agreement and the attached Annex of Definitions include the plural as well as the singular.

(b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted governmental accounting principles.

(c) All references herein to “generally accepted governmental accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.

(d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.

(e) The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(f) The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 1.04. Legal Representation of the Parties. This Agreement was negotiated by the parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to the construction or interpretation of this Agreement.

ARTICLE II

DEVELOPMENT OF THE PROJECT

Section 2.01. Development of the Project Site. The City and Developer hereby agree that the Project consists of the development and improvement of the Project Site, presently expected to include the commercial and residential buildings, parking improvements, and other improvements generally depicted on **Exhibit B** attached hereto and including, without limitation, the City Infrastructure Improvements, and the Developer Infrastructure Improvements. The City and Developer further agree that the Project shall be developed, constructed, completed, and operated on the Project Site in substantial accordance and compliance with the terms and conditions of this Agreement and that the “Project” is presently expected to include the following:

(a) Commercial Improvements. The design, development, construction and completion of the following, along with associated parking, sidewalk, landscaping, open space, and infrastructure improvements:

(i) Retail Space. Approximately 455,500 square feet of first-class retail, restaurant, convenience store (with or without fuel and car wash), office, and service space which may include, among other concepts, specialty and boutique shops, restaurants, entertainment, anchor and junior anchor tenants, and other high-quality retail concepts.

(ii) Retail Anchor. Approximately 50,000 square feet of first-class retail anchor space labeled as building “H” and conceptually located as set forth on **Exhibit B** attached hereto.

(iii) Hotels. Approximately three (3) limited service hotels with national flags containing a total of approximately two hundred (200) rooms.

(b) Residential Improvements. The design, development, construction and completion of the following, along with associated parking, sidewalk, landscaping, open space, and infrastructure improvements:

(i) Single-Family Residential Improvements. Approximately 367 units of single-family residences, comprised of approximately 168 single-family villas and approximately 199 single-family homes, including an amenity center, swimming pool, and certain other amenities.

(ii) Multifamily Residential Improvements. Approximately eleven (11) buildings comprising a total of approximately 424 units of multifamily residences.

(c) Developer Infrastructure Improvements. The design, development and construction and completion of the Natural Gas Improvements, Street Improvements, and all other infrastructure improvements to and within the Project Site which the Developer is obligated to design, fund, and construct pursuant to this Agreement.

(d) City Infrastructure Improvements. The design, development and construction and completion of the Electric Improvements, Sewer Improvements, and Water Improvements to and within the Project Site which the City is obligated to design, fund, and construct pursuant to this Agreement.

Notwithstanding anything herein to the contrary, the parties acknowledge and agree that the building number, type, size, location, and other aspects of the Project described above and depicted on **Exhibit B** attached hereto are conceptual in nature and may be adjusted by Developer in its sole discretion from time to time in response to market demand.

Section 2.02. Water Service. The City shall be responsible for providing water service to the Project Site through an agreement with WaterOne and constructing and financing the Water Improvements.

Section 2.03. Project Costs. Subject to the terms and conditions of this Agreement, Developer or the successor owners of portions of the Project Site shall be responsible for initially funding all costs to construct the Project except such costs as are attributable to the City Infrastructure Improvements, which shall be the sole responsibility of the City at the City's cost and expense, including, without limitation, any costs to signalize the intersections of 175th Street with Phase A Arterial or Clare Road.

Section 2.04. Relationship of the City and Developer. The performance of all activities to be performed by Developer hereunder shall be as an independent contractor and not as an agent of the City.

Section 2.05. Project Timing – Milestones. Developer, subject to the terms of Section 7.07 hereof, agrees to construct the Developer Infrastructure Improvements and certain numbers of units of single-family residences based upon the schedule set out and contained within **Exhibit G**, the Performance Milestones. In the event that Developer shall fail to meet any of the Performance Milestones set forth in **Exhibit G** that are the responsibility of Developer, then the City shall have the remedy set forth in Section 7.04(e) hereof; provided, however, that in the event the Developer fails to, subject to Section 7.07 hereof: (i) complete the Performance Milestones relating to either the Phase A Arterial or Phase B Arterial within six (6) months following the date for completing such milestone; or (ii) comply with the Performance Milestone relating to permits for single family residences and such failure lasts for at least twenty-four (24) months, then in each instance described in (i) or (ii), and following notice and failure to cure as set forth in Section 7.03(b), the City may pursue any remedy or remedies set forth in Article VII hereof. Subject to the terms of Sections 6.08 and 7.07 hereof, the City agrees to construct the City Infrastructure Improvements based upon the schedule set out and contained within **Exhibit G**, the Performance Milestones. In the event that the City shall fail to meet any of the Performance Milestones set forth in **Exhibit G**, then the Developer

shall have the remedies set forth in Article VII hereof. The City and the Developer acknowledge and agree that, from the Effective Date of the Original Agreement (as defined therein) through and including the Effective Date of this Agreement, both parties have diligently and continuously pursued completion of their respective obligations hereunder.

Section 2.06. Excise Tax. The City levies and collects an excise tax pursuant to Article 12, Section 5 of the Constitution of the State, Ordinance No. 2518 of the City, and K.S.A. 12-137 and 12-138 (the “Excise Tax”). Developer shall be obligated to pay the Excise Tax pursuant to Applicable Laws and Requirements as and when portions of the Project Site are platted; provided, however, that the Developer shall receive credits against the Excise Tax payable in connection with any portion of the Project Site in the amount of the reasonable and documented costs to design and construct the Phase A Arterial and Phase B Arterial, which costs shall be certified in the manner described in Section 3.09 hereof for the certification of Eligible Expenses being reimbursed from CID Sales Taxes. Notwithstanding anything herein to the contrary, no credit shall be extended to, and the City shall not have any obligation to pay or compensate, the Developer in excess of the total amount of Excise Tax calculable for platting the entirety of the Project Site.

Section 2.07. Indemnification. Developer agrees to indemnify, defend, and hold the City, its employees, agents and any independent contractors and consultants engaged by the City for work on this Project (each, a “City Indemnified Party” and collectively, the “City Indemnified Parties”) harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorneys fees, resulting from, arising out of, or in any way connected with: (i) the acquisition of the Project by Developer; (ii) the management, design, construction, development and completion of any portion of the Project by the Developer, its Affiliates, or its agents or contractors; (iii) the construction, use or occupation of the Project by Developer or anyone acting by, through or under the Developer; (iv) damage or injury, actual or claimed, of whatsoever kind or character to persons or property occurring or allegedly occurring in, on or about the Project Site; (v) any breach, default or failure to perform by the Developer under this Agreement; (vi) any act by an employee of the City at or on the Project Site which is within or under the control of the Developer or is performed by City employee at the request of the Developer or its, agents, employees or contractors; (vii) the Developer’s actions and undertaking in implementation of the Project or this Agreement; and (viii) any delay or expense resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor (such matters to be indemnified being the “City Indemnified Matters”). The parties further agree as follows:

(a) Developer’s indemnity obligation under this Section 2.07 for a City Indemnified Matter may be excused if and to the extent that such harm to the City was entirely the direct and proximate result of negligence or willful misconduct of the City or its officers, employees or agents acting in the capacity of an officer, employee or agent of the City at the time; however, Developer’s indemnity obligation under this Section 2.07 for a City Indemnified Matter may be reduced, but will not be excused, to the extent that such harm to the City was only partially a direct and proximate result of negligence or willful misconduct of the City or its officers, employees or agents acting in the capacity of an officer, employee or agent of the City at the time.

(b) Developer’s indemnity obligations under this Agreement include, but are not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of

whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”; 42 U.S.C. Section 9601, *et seq.*), (ii) the Resource Conservation and Recovery Act (“RCRA”; 42 U.S.C. Section 6901 *et seq.*), (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, and any other Applicable Laws and Requirements at the Project Site. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify City from liability.

(c) In the event any City Indemnified Matter arises, the City Indemnified Party shall give prompt notice to Developer of the occurrence of such event, but the failure to notify Developer will not relieve Developer of any liability that it may have to a City Indemnified Party. After receipt of such notice, Developer may elect to defend, contest or otherwise protect a City Indemnified Party against any such City Indemnified Matter, at the cost and expense of Developer, utilizing counsel approved by a City Indemnified Party. The City Indemnified Party shall have the right, but not the obligation, to participate, at the City Indemnified Party’s own cost and expense, in the defense thereof by counsel of the City Indemnified Party’s choice. In the event that Developer after receiving such notice from the City Indemnified Party shall fail timely to defend, contest or otherwise protect a City Indemnified Party against such City Indemnified Matter, the City Indemnified Party shall have the right to do so, and (if such defense is undertaken by the City Indemnified Party after notice to Developer asserting Developer’s failure to timely defend, contest or otherwise protect against such City Indemnified Matter), the City Indemnified Party may submit any bills for reasonable fees and costs received from its counsel to Developer for payment for services that were rendered no sooner than thirty (30) days after such notice is provided to Developer and, within thirty (30) business days after such submission of such bills for fees and costs, Developer shall transfer to the City Indemnified Party sufficient funds to pay such bills. Developer acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

(d) A City Indemnified Party shall submit to Developer any settlement proposal that the City Indemnified Party shall receive. Developer shall be liable for the payment of any amounts paid in settlement of any City Indemnified Matter to the extent that Developer consents to such settlement. Neither Developer nor the City Indemnified Party will unreasonably withhold its consent to a proposed settlement.

(e) Developer expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Agreement imposed upon Developer in order to induce the City to enter into this Agreement. To the fullest extent permitted by law, a City Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Agreement, and the right to apply any deposit or other funds submitted by Developer to the City Indemnified Party in payment of the damages suffered by it, as is necessary to protect the City Indemnified Party from loss. If such court action is successful, the City Indemnified Party shall be reimbursed by Developer for all fees and expenses (including attorneys’ fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

(f) Developer's indemnification obligations and the City's rights to indemnification under this Agreement with respect to events or circumstances that occurred or arose during the term of this Agreement shall survive the termination of this Agreement.

Section 2.08. Non-Discrimination. The Developer agrees that throughout the Term:

(a) The Developer shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and shall not discriminate against any person in the performance of work under the Agreement because of race, religion, color, sex, national origin, ancestry or age;

(b) In all solicitations or advertisements for employees, the Developer shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");

(c) If the Developer fails to comply with the manner in which the Developer reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Developer shall be deemed to have breached the Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;

(d) If the Developer is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Developer shall be deemed to have breached the Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and

(e) The Developer shall include the provisions of Sections 2.08(a) through (d) above in every contract, subcontract or purchase order so that such provisions will be binding upon such contractor, subcontractor or vendor.

The Developer further agrees that throughout the Term, the Developer shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project.

ARTICLE III

CID FINANCING

Section 3.01. Anchor CID and Common CID. Developer shall submit, and the City shall reasonably consider, CID petitions (the "CID Petitions") for the Anchor CID and each of the four (4) community improvement districts comprising the Common CID, which CID Petitions shall request the levy of a CID Sales Tax within the Anchor CID (the "Anchor CID Sales Tax") and the Common CID (the "Common CID Sales Tax," and together with the Anchor CID Sales Tax, is referred to as the "CID Sales Tax" or "CID Sales Taxes") as described in Section 3.02 below. Developer, using private equity and debt, will initially advance all of the costs for the design, development and construction of the Common CID Improvements, which shall be reimbursable from the Common CID Sales Tax, and will initially advance all of the costs for the design, development and construction of the Anchor CID Improvements, which shall be reimbursable from the Anchor CID Sales Tax. Developer, subject to the terms and conditions of this

Agreement, including without limitation the CID Caps set forth in Section 3.04 below, shall be reimbursed for Eligible Expenses from and to the extent of the CID Sales Tax proceeds collected during the Term. If the Developer has been reimbursed for all Eligible Expenses reimbursable from CID Sales Tax prior to the date the Common CID expires or is terminated pursuant to this Agreement, the City shall be entitled to reimbursement from such remaining CID Sales Tax for the costs of City Infrastructure Improvements or City street and traffic control projects with demonstrable benefit to the Commercial Improvements within the Project Site. Subject to Applicable Laws and Requirements, the Developer may “phase” the requests for separate community improvement districts comprising the Common CID, and the City shall reasonably consider each such request; provided, however, that no CID shall have a term commencing later than January 1, 2029, or expiring later than December 31, 2050. The City acknowledges that without the City’s creation and administration of the Common CID and Anchor CID as described herein, Developer would not have entered into this Agreement, as carrying out Developer’s obligations hereunder would not be financially feasible.

Section 3.02. CID Sales Tax. The City hereby agrees that the Anchor CID Improvements and Common CID Improvements may be financed and reimbursed with Pay-As-You-Go CID Financing, payable from revenues received from the imposition of CID Sales Taxes in the amount of one percent (1%) on the sale of tangible personal property at retail or rendering or furnishing services which are taxable pursuant to the Kansas Retailers’ Sales Tax Act (K.S.A. 79-3601 *et seq.*) within the Anchor CID and each of the separate community improvement districts comprising the Common CID. The Developer agrees to provide to the Kansas Department of Revenue (the “DOR”) a list of tenants within each of the CIDs within the timeframes required by the DOR, so that the DOR can notify tenants within the CIDs of their requirement to collect a CID Sales Tax beginning on those certain dates agreed to by the City and the Developer. At the time each list of tenants is provided to the DOR, the Developer shall also provide a copy to the City. The term of collection for the Anchor CID Sales Tax shall expire on the date all Eligible Expenses relating to the Anchor CID Improvements have been reimbursed through Pay-As-You-Go CID Financing. The term of collection (the “CID Collection Period”) for each of the community improvement districts comprising the Common CID and the Anchor CID shall be twenty-two (22) years unless terminated sooner pursuant to this Agreement. At the end of the CID Collection Period for each CID, the parties understand and agree that each CID shall thereafter terminate, and the applicable CID Sales Tax shall terminate and no longer be levied or collected within such CID.

Section 3.03. CID Sales Tax Funds. During the Term, all CID Sales Tax proceeds generated within each separate CID and received by the City from DOR shall be deposited into a corresponding separate CID Sales Tax Fund, which shall be established and administered by the City in compliance with the laws of the State and this Agreement. The City shall establish and maintain separate CID Sales Tax Funds for the Anchor CID and each of the community improvement districts comprising the Common CID.

Section 3.04. Pay-As-You-Go CID Financing. The parties hereby agree that the proceeds from the CID Sales Tax shall be disbursed by the City on March 1, June 1, September 1, and December 1 of each calendar year, or the first Friday following each such date, from each of the separate CID Sales Tax Funds on a pay-as-you-go basis (“Pay-As-You-Go CID Financing”), to reimburse Developer for Eligible Expenses, if and to the extent that (i) there are CID Sales Tax proceeds in the applicable CID Sales Tax Fund, (ii) Developer has fully satisfied all of the conditions set forth in Section 3.05 hereof, (iii) the term of the applicable CID Sales Tax has not yet expired, (iv) Developer has not already been reimbursed for Eligible Expenses in an amount equal to the applicable CID Cap (as defined below), and (v) Developer is not in default under the terms and conditions of this Agreement beyond any applicable notice and cure periods provided herein. The parties further agree as follows:

(a) The Anchor CID Sales Tax available to Developer for reimbursement of Eligible Expenses relating to the Anchor CID Improvements shall in no event exceed \$8,000,000 (the “Anchor CID Cap”). Once Developer has received an amount equal to the Anchor CID Cap for reimbursement of Eligible Expenses relating to the Anchor CID Improvements through Pay-As-You-Go CID Financing, the parties understand and agree that the Anchor CID shall thereafter terminate, and the Anchor CID Sales Tax shall terminate and no longer be levied or collected within the Anchor CID.

(b) The Common CID Sales Taxes available to Developer for reimbursement of Eligible Expenses attributable to the Common CID Improvements shall in no event exceed \$17,200,000 (the “Common CID Cap”), subject to **Exhibits J-1** through **J-4** and **Schedule 3.04** attached hereto. Once Developer has received an amount equal to the Common CID Cap for reimbursement of Eligible Expenses relating to the Common CID Improvements through Pay As You Go CID Financing, the parties understand and agree that the Common CID Sales Taxes shall thereafter be available to reimburse certain City expenditures as set forth in Section 3.01 hereof.

(c) Developer shall not receive any reimbursements from Pay-As-You-Go CID Financing unless and until the conditions precedent set forth in Section 3.05 have been fully satisfied related to the relevant CID (i.e., the Anchor CID or one of the CIDs that constitute the Common CID) as determined by City in its reasonable discretion, or as waived in whole or in part by the City in its sole discretion.

Section 3.05. Conditions Precedent to Reimbursements. Developer hereby understands and agrees that it shall not receive any reimbursements for Eligible Expenses unless and until the conditions precedent set forth below have been fully satisfied as determined by City in its reasonable discretion or waived in whole or in part by the City in its sole discretion:

(a) City has approved Certificates of Expenditure for such CID Improvements;
and

(b) Developer shall be in full compliance with the terms and conditions of this Agreement and shall not be in default hereunder, nor shall there be conditions, actions or omissions of Developer which will, with the passage of time, become occurrences of default hereunder.

Section 3.06. Reserved.

Section 3.07. Payment of CID Administrative Fee. As and when there are sufficient CID Sales Tax revenues from the CIDs to pay the CID Administrative Fee, Developer hereby understands and agrees that such CID Administrative Fee shall have first priority to available funds in the CID Sales Tax Fund. The CID Administrative Fee shall be payable not less than annually at the times and in the manner established per Section 9.01 hereunder or, at the option of the City, at the times CID Sales Tax revenues are disbursed by the City to the Developer pursuant to Section 3.04 hereof.

Section 3.08. CID Reimbursement. In no event will the reimbursement to the Developer described hereunder exceed the CID Caps.

Section 3.09. Certificate of Expenditures. In connection with the Eligible Expenses for the CID Improvements, Developer shall certify all costs and expenditures in accordance with the following:

(a) The Developer shall submit to the City a Certificate of Expenditure in the form attached hereto as **Exhibit H** setting forth the amount for which reimbursement is sought and an itemized listing of the related Eligible Expenses. Prior to or concurrently with the first Certificate of Expenditure submitted by Developer to the City, the Developer shall submit plan documentation to assist the City in reviewing the Certificate of Expenditures. Such documentation shall include, but not be limited to:

(i) A scalable “General Layout” plan sheet showing the general layout and location of the Eligible Expenses. Non-eligible items shall be clearly differentiated from eligible items.

(ii) A summary of plan quantities delineating the eligible from non-eligible items.

(iii) Copies of certified bid tabulations or contracts verifying the contractor’s bid on eligible items. Such tabulations or contracts must clearly differentiate items by eligible and non-eligible items.

(b) Each Certificate of Expenditure shall be accompanied by such bills, contracts, invoices, lien waivers and other evidence as the City shall reasonably require to document appropriate payment and shall include an overall cost summary, as well as a cost summary for each division of work (i.e., grading, erosion control, roadway, sanitary sewer and storm sewer). The cost breakdown shall include the quantity, unit price and price extension for each eligible item requested for reimbursement.

(c) The City reserves the right to have its engineer, City staff or other agents or employees inspect all work in respect of which a Certificate of Expenditure is submitted, to examine the Developer’s and other’s records relating to all costs of CID Improvements to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof. The Developer hereby agrees to pay all actual and verifiable expenses incurred by the City pursuant to this subsection (c), which shall be deemed Eligible Expenses and reimbursable with CID Sales Tax to Developer.

(d) The City shall have forty-five (45) calendar days after receipt of any Certificate of Expenditure to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Certificate of Expenditure directly relates to the CID Improvements; (2) the expense was incurred; (3) Developer is not in default under this Agreement beyond any applicable notice and cure periods provided herein; (4) the expense is not prohibited by the terms and conditions of this Agreement, then the City shall approve the Certificate of Expenditure and reimburse the Developer for financing the cost of the CID Improvements pursuant to the terms of this Agreement. If the City disapproves of the Certificate of Expenditure, the City shall notify the Developer in writing of the reason for such disapproval within such forty-five (45) day period. If the City disapproves of some but not all of the costs included within the Certificate of Expenditure, the costs that are not disapproved shall be approved by the City at such time. Disapproved costs may be re-submitted on a

subsequent Certificate of Expenditure at any time with such additional information as required to satisfy the terms hereof.

(e) During the Term, the Developer shall endeavor to submit Certifications of Expenditures for those expenditures made in connection with the CID Improvements on a quarterly basis.

Section 3.10. Reimbursement Priority. All payments or reimbursements of whatever kind from the City to the Developer under this Agreement shall be made in the following priority:

(a) First, to the City, to the extent permitted by Applicable Laws and Requirements, as payments by the Developer for (i) all amounts delinquently due or owing (including all taxes, fees, or fines), including any interest and penalty thereon, by the Developer to the City under this Agreement, under any other agreement with the City, or under any Applicable Laws and Requirements; (ii) all actual out-of-pocket costs incurred (and any interest or penalty thereon) by the City in entering into, operating under, or enforcing this Agreement, including without limitation the Administrative Fee and reasonable attorney's fees; (iii) indemnification of the City for any indemnity obligation owed by Developer (or its Affiliate) to the City, and any interest or penalty thereon; and (iv) any reimbursement due to the City on account of any prior overpayment or over-reimbursement to Developer under this Agreement, under any other agreement with the City, or under any Applicable Laws and Requirements; and

(b) Second, to the Developer for actual amounts to which the Developer is entitled by the other provisions of this Agreement; provided, however, that reimbursements to the Developer and the City for Common CID Improvement Costs shall be made pursuant to the orders of priority set forth in **Exhibits J-1** through **J-4** attached hereto.

ARTICLE IV

INDUSTRIAL REVENUE BONDS

Section 4.01. Industrial Revenue Bonds. Subject to all Applicable Laws and Requirements, and subject further to compliance by Developer with all City requirements for the issuance of industrial revenue bonds ("**IRBs**"), the Developer has requested, and the City shall reasonably consider, IRB financing to obtain: (i) an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment and furnishing for the Anchor CID Improvements; and (ii) an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment and furnishing, together with an abatement of ad valorem taxes for the Multifamily Residential Improvements. All expenses related to the issuance of such IRBs, including, but not limited to, the City's application fee, the City's origination fees (which will be determined as set forth on **Schedule 4.01** attached hereto), and the fees and expenses of the City's Bond Counsel, shall be the responsibility of the Developer. Each series of IRBs issued pursuant to this Agreement shall be purchased by the Developer. The City acknowledges that without the City's creation of the IRBs upon the terms set forth herein, Developer would not have entered into this Agreement, as carrying out Developer's obligations hereunder would not be financially feasible. Each request for IRBs under this Section 4.01 and each request for an abatement of the ad valorem taxes on the Multifamily Residential Improvements pursuant to Section 4.02 hereof shall, from and after the Effective Date, include a cover letter (and any such plans, elevations, and other information as may be necessary) outlining the design features, materials, and amenities incorporated into the proposed improvements which exceed

minimum code requirements and which, with respect to the Anchor CID Improvements, shall be consistent with the first-class, high-quality uses of the Commercial Improvements described in Section 2.01(a) hereof.

Section 4.02. Multifamily Residential Abatements. The Developer has requested, and the City shall reasonably consider, abatements of seventy-five percent (75%) of the ad valorem taxes on the Multifamily Residential Improvements financed with one or more series of IRBs. Each such abatement shall be: (i) subject to the terms of a PILOT Agreement between the City and the Developer in the form attached hereto as **Exhibit I**; (ii) for a term of ten (10) years, with the last abatement term starting no later than the 2030 tax year (payable December 2030 and May 2031) and ending with taxes payable December 2039 and May 2040. In no event shall any abatement referred to under this Agreement have the effect of abating any mill levy which cannot be abated pursuant to State law or abating any special assessment.

ARTICLE V

ASSIGNMENT AND TRANSFER

Section 5.01. Transfers and Assignments by Developer. Developer may freely convey and transfer some or all of the Project Site without the prior approval of the City's Governing Body; provided, however, that the rights, duties and obligations hereunder of the Developer may not be assigned, conveyed or transferred, in whole or in part, to another entity, without the prior approval of the City, in its reasonable discretion. Such approval may be provided by the City Administrator; provided, however, that the City Administrator may, in his or her discretion, seek such approval from the Governing Body of the City. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations of the Developer with respect to the portion of this Agreement being transferred. Notwithstanding anything in this Agreement to the contrary, Project Site Owner may convey the Project Site in one or more transactions to the Developer without notice to or consent from the City.

No City consent shall be required for any assignment described above where it is a security interest granted to secure indebtedness to any construction or permanent lender which has extended financing to the Developer or where the assignee is Developer's Affiliate (but in such case Developer shall not be released from the obligations assigned to its Affiliate unless until the City approves such release, which shall not be unreasonably withheld or delayed). Notwithstanding anything in this Agreement to the contrary, if the Developer has assigned any rights, incentives, or other benefits under this Agreement to an Affiliate, and if the City is obligated to reasonably consider a request from the Affiliate to grant or implement such rights, incentives, or benefits, the City's reasonable consideration may take into account any uncured breaches or events of default under this Agreement, or for which notice thereof has been provided and not yet cured, on the part of the City or the Developer.

Developer shall, at Developer's sole cost, promptly prepare all documents necessary to memorialize any assignment permitted under this Article V and promptly provide final, executed versions to the City for its record. Where City consent is required hereunder for an assignment, Developer shall, at Developer's sole cost, promptly prepare all documents necessary to memorialize any assignment approved under this Article V, and Developer shall reimburse the City for all costs and expenses (including reasonable attorneys' fees) which the City incurs in a pursuit of or as a result of reviewing and approving of such assignment. Following any assignment permitted under this Article V of all or any portion of Developer's rights relating to the Multifamily Residential Improvements, Developer shall thereafter be relieved of the obligations relating to the rights assigned thereunder.

ARTICLE VI

USE AND OPERATION OF THE PROJECT

Section 6.01. Term. The Term of this Agreement shall commence on the Effective Date and shall expire upon the later of: (i) the date of the last disbursement of CID Sales Tax to Developer or its permitted assigns pursuant to the terms and conditions of this Agreement; (ii) the date that the last CID Bond is redeemed; or (iii) the date that the last IRB is redeemed (the “Term”). Notwithstanding the foregoing, the City hereby agrees that at any time following Developer’s completion of the Phase A Arterial and Phase B Arterial, Developer may terminate this Agreement by thirty (30) days prior written notice to the City. Upon any such termination by Developer, the parties hereby agree that (i) the City shall terminate any or all of the CIDs and/or any or all of the CID Sales Taxes, and Developer shall have no further rights to any proceeds or reimbursements therefrom, and (ii) neither party shall have any further obligations under this Agreement.

Section 6.02. Use and Operation. Developer covenants that at all times during the Term it will, at its expense:

(a) Conduct its business at all times in a dignified quality manner and in conformity with the industry standards for similar facilities and to help establish and maintain a high reputation for the Project.

(b) Perform its duties to maintain the Project, or cause the same to be maintained, as set forth in Section 6.03 hereof.

(c) Developer hereby understands and agrees that the nature of the commercial facilities to be developed pursuant to this Agreement was critical to the approval of the same. Accordingly, the parties hereby agree that the following uses shall be prohibited within the Project Site:

(i) Any use which is offensive by reason of odor, fumes, dust, smoke, noise, or pollution, or which constitutes a nuisance or is hazardous by reason of fire or explosion, or injurious to the reputation of the Project or Project Site.

(ii) A gas station, stand-alone car wash, or truck stop; provided, however, this prohibition shall not be applicable to a convenience store, with or without fuel or car wash, or a first-class stand-alone full-service carwash.

(iii) A facility primarily used as a storage warehouse or freight terminal; provided, however, this prohibition shall not be applicable to a climate-controlled ministorage facility with enclosed, interior access to storage units.

(iv) Any pawn shop or flea market.

(v) Any store primarily selling tobacco products or vaping or tobacco-smoking paraphernalia.

(vi) Pay-day or title loan facilities.

(vii) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any building within the Project.

(viii) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an owner of any portion within the Project to determine its own selling prices nor shall it preclude second-hand sales or the conduct of periodic seasonal sales, promotional or clearance sales, all of which are specifically permitted).

(ix) Any central laundry, or laundromat; provided, however, this prohibition shall not be applicable to a drop off and pickup facility, or a central laundry or laundromat that complies with CERCLA, RCRA and other Applicable Laws and Requirements (as defined herein).

(x) Any automobile, truck, trailer or recreational vehicle with outside sales, leasing, or display unless (i) approved by the City, or (ii) in conjunction with temporary promotions, displays and other similar marketing activities, or (iii) for the sale of luxury vehicles displayed only within an indoor showroom for purposes of taking orders for cars, not storing inventory of any kind, subject, however, to compliance with all Applicable Laws and Requirements.

(xi) Any establishment selling or exhibiting sexually oriented materials or which sells drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially nude dancers or wait staff; except that this provision shall not be deemed to preclude the operation within the Project of either a nationally or regionally recognized book store, or a drug store or pharmacy, or a department within a retail store offering for sale its usual or customary inventory of books, magazines and/or related pharmaceutical materials.

(xii) Any “street marketing” of any kind, including without limitation, inflatable signs or characters, people dressed in costume, holding signs or wearing sandwich-boards or otherwise advertising directly to pedestrians or vehicular traffic.

(xiii) Any precious metals facilities; provided, however, this prohibition shall not apply to jewelry stores.

(xiv) Any use not permitted by the applicable zoning ordinance of the City. The foregoing list of prohibited uses is not intended to supplant the requirements and/or prohibition of uses stated within the City’s Code and/or the City’s zoning ordinance.

The Governing Body of the City may grant variances to the restrictions set forth in this Section 6.02(c) from time to time in its sole and absolute discretion. Within sixty (60) days of the Effective Date, Developer and the City shall execute a document which shall memorialize the restrictions set forth in this Section 6.02(c), memorialize the restrictions set forth in Section 6.03 below, and provide notice of the proposed CIDs, and record the same against the real property within the Project Site, which restrictions shall be effective and run with the land for the Term of this Agreement.

Section 6.03. Maintenance and Use. During the Term, Developer shall cause any portion of the Project owned by Developer or its Affiliates to be maintained, preserved and kept in good repair and working order and in a safe condition, consistent at all times with other similarly situated single-family, multifamily, retail and commercial space in the greater metropolitan Kansas City area, and will make, or cause to be made, all repairs, renewals, replacements and improvements necessary for the safe, efficient, and advantageous conduct of its business and operations within the Project. Nothing in this Section 6.03 shall preclude Developer from removing or demolishing any building or buildings, if in its reasonable judgment, such removal or demolition is desirable in the conduct of its business. Developer may make additions, alterations and changes to the Project so long as such additions, alterations and changes are made in compliance with all Applicable Laws and Requirements and this Agreement.

Section 6.04. Compliance. Developer shall conduct its affairs and carry on its business and operations in such a manner as to comply with all Applicable Laws and Requirements, and to observe and conform to all valid orders, regulations or requirements (including, but not limited to, those relating to safety and health) of any government authorities applicable to the conduct of their business and operations and the ownership of the Project. Developer agrees to promptly pay any and all fees and expenses associated with any safety, health or other inspections required under this Agreement or imposed by Applicable Law and Requirements. Provided, however, that nothing contained in this Agreement shall require Developer to comply with, observe and conform to any such law, order, regulation or requirement of any government authorities so long as the validity thereof shall be contested by Developer in good faith by appropriate proceedings, and provided that Developer shall have set aside on its books adequate reserves in accordance with GAAP or secured adequate bonding with respect to such contest and such contest shall not materially impair the ability of Developer to meet its obligations under this Agreement.

Section 6.05. Payment of Taxes and Liens. The Parties hereby agree as follows:

(a) During the Term of this Agreement, Developer and its Affiliates shall pay when due all real estate taxes and assessments on the property it owns within the City. In the event that the Developer shall fail to pay all such applicable real estate taxes and assessments, the parties understand and agree that the City may suspend all reimbursements of Eligible Expenses through Pay-As-You-Go CID Financing during any time that such real estate taxes and assessments on the property the Developer (or its Affiliate) owns within the City remain unpaid. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Developer or its Affiliates from contesting the assessed value of the properties, improvements or the taxes thereon in good faith by appropriate proceedings; provided however that Developer or its Affiliates shall pay any and all amounts that are contested under protest (but only if such taxes are otherwise due and payable at such time) while any such proceedings are pending. The Developer and any Affiliates shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Developer's or such Affiliates' property within the Project Site; provided, however, that Developer's failure to comply with such notice requirement shall not entitle the City to terminate this Agreement as set forth in Section 7.04(a).

(b) Developer further agrees that no mechanics' or other liens shall be established or remain against the Project or the property within the Project Site, or the funds in connection with any of the Project, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, the Developer shall not be in default if mechanics' or other liens are filed or established and the Developer contests in good faith said mechanics' liens and in such event

may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

Section 6.06. Licenses, Permits, and Fees. Developer hereby recognizes, stipulates and agrees that in the design, construction, completion, use or operation of the Project, Developer, its general contractor, and all other developers of any portion of the Project Site, shall procure and pay for any and all permits, licenses or other forms of authorizations that are, from time to time, required, shall be responsible for all standard City fees and charges including, without limitation, charges for utility system development, building permits, and inspections but specifically excluding Excise Tax attributable to the Project Site. Further, nothing herein shall be construed as any release by the City of the responsibility of Developer to comply with, and satisfy the requirements of, all Applicable Laws and Requirements.

Section 6.07. Reserved.

Section 6.08. Access and Coordination of Work. During the Term, Developer hereby recognizes, acknowledges and agrees that the City, and its duly authorized representatives and agents, shall have the right to enter the portions of the Project at reasonable times and upon reasonable notice, to substantiate compliance with this Agreement, including to perform the City's obligations hereunder, or, to the extent Developer has failed to cure any breach within applicable notice and cure periods, to cure any defaults under this Agreement. In exercising its rights hereunder, the City shall use reasonable efforts to avoid unreasonable interference with the operation of the Project. Nothing contained in this Section 6.08 shall restrict or impede the right of the City to enter the Project Site pursuant to any Applicable Laws and Requirements. The parties further acknowledge and agree that completion of the City Infrastructure Improvements in the time and manner described in this Agreement will require coordination and cooperation between the parties and will further require that the Developer timely provide access to the Project Site, convey necessary easements, and complete grading and other preliminary improvements prior to the City's performance of certain work (such easements, grading, and improvements, to be in accordance with the layout of the Sewer Improvements, Water Improvements, and Electric Improvements, as set forth on **Exhibits C, D, and E** hereof, respectively, unless the parties agree otherwise in writing). The parties agree to coordinate and cooperate as described in this section to facilitate completion of the City Infrastructure Improvements.

Section 6.09. Periodic Meetings with the City. From the Effective Date until substantial completion of the Project, Developer hereby agrees to meet with the City and/or its agents or consultants at such intervals as Developer, the City and any such designee shall mutually agree or reasonably request, and not more frequently than monthly, to review and discuss the design, development and construction of the Improvements and the Project. At any time during the Term of this Agreement, Developer hereby agrees to reasonably respond to requests for information from the City or its representatives about the Project or the Project Site.

Section 6.10. Civic and Community Participation. During the Term of this Agreement, Developer agrees to actively participate in the civic, charitable, educational, philanthropic and economic development of Gardner. Accordingly, at a minimum, Developer shall at all times be a dues-paying member in good standing with the Gardner Edgerton Chamber of Commerce and an investor in the Southwest Johnson County Economic Development Corporation.

Section 6.11. Signage. Developer agrees that the monument signage for the commercial portion of the Project shall include a reference to "Gardner, Kansas" or include some other similar reference to the City.

Section 6.12. Power of the City. Notwithstanding anything set forth herein to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights, powers and discretion of the City, including the Governing Body of the City, to act in its capacity as a public body. Further, nothing herein shall relieve Developer from complying with all Applicable Laws and Requirements.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Default by the City. The City shall be in default under this Agreement if the City fails to keep or perform any covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within thirty (30) days after Developer has given the City written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected.

Section 7.02. Developer's Remedies Upon Default by the City. If a default by the City occurs under this Agreement and is continuing, Developer may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by the City of any provision of this Agreement, however, the City's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall the City be liable for any remote, punitive or consequential damages. The City's liability hereunder shall also be limited by Applicable Laws and Requirements. Further, in the event the City fails to complete the City Infrastructure Improvements in accordance with the Project Milestones, Developer shall have the option to complete, or cause to be completed, the unfinished City Infrastructure Improvements. In the event Developer undertakes such completion of the unfinished City Infrastructure Improvements, the City shall cooperate with Developer's assumption of such unfinished improvements and compensate the Developer for all associated expenses to the extent such expenses are documented and demonstrated to be reasonable.

Section 7.03. Default by Developer. Developer shall be in default under this Agreement if:

- (a) Developer fails to make any of the payments of money required by the terms of this Agreement, and Developer fails to cure or remedy the same within ten (10) business days after the City has given Developer written notice specifying such default; or
- (b) Developer fails to keep or perform any covenant or obligation herein contained on Developer's part to be kept or performed, and Developer fails to remedy the same within thirty (30) days after the City has given Developer written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected; or
- (c) Without limiting the generality of the foregoing, Developer shall assign or transfer the Project and/or this Agreement in violation of the terms and conditions set forth in Article V; or

(d) Developer shall file a voluntary petition under any bankruptcy law or an involuntary petition under any bankruptcy law is filed against any such party in a court having jurisdiction and said petition is not dismissed within thirty (30) days or Developer, makes an assignment for the benefit of its creditors; or a custodian, trustee or receiver is appointed or retained to take charge of and manage any substantial part of the assets of Developer and such appointment is not dismissed within thirty (30) days; or any execution or attachment shall issue against Developer whereupon the Project Site, or any part thereof, or any interest therein of Developer under this Agreement shall be taken and the same is not released prior to judicial sale thereunder (each of the events described in this subsection being deemed a default under the provisions of this Agreement);

(e) Developer breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within thirty (30) days of notice from the City; or

(f) Developer or an Affiliate breaches any PILOT Agreement between the City and the Developer or between the City and such Affiliate relating to any portion of the Multifamily Residential Improvements and fails to remedy such breach within the time period specified thereunder.

Section 7.04. City's Remedies Upon Default by Developer. Upon the occurrence and continuance of a Developer default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

(a) Whenever any default by Developer shall have occurred and be continuing, subject to applicable cure periods as set forth above, the City may (i) refuse to approve any further Certificates of Expenditures and make any further disbursements of CID Sales Tax unless and until such default is cured by the Developer, and/or (ii) terminate the CID and/or the CID Sales Tax, in which case Developer shall have no further rights to any proceeds or reimbursements therefrom, and/or (iii) terminate this Agreement. The rights and remedies reserved by the City under this Section 7.04 shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions.

(b) The City may set-off any amounts due or owing from the Developer to the City (including without limitation any amounts under or referred to in Section 3.10(a) above) against any payment(s) due or owing from the City to the Developer.

(c) The City may also exercise the remedies specifically provided in any Article, Section or subsection of this Agreement.

(d) The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the specific performance of the duties and obligations of the Developer as set forth in this Agreement (except that in no event shall Developer be compelled to design or construct any improvements), to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer default; provided, however, that Developer's liability shall be limited to direct damages and in no circumstance shall include liability for punitive or consequential damages.

(e) In the event the Developer fails to meet one or more of the Developer's obligations in accordance with the Project Milestones, and the Developer does not correct such failure within thirty (30) days of notice thereof from the City, the Developer shall pay the City the sum of \$15,000 on the first day of each month after expiration of such thirty (30) day period until the Developer has remedied such failure. (By way of illustration only, if Developer's first twelve-month deadline to obtain single-family residential building permits is June 15, 2022, the City provides notice of this failure on June 16, 2022, the Developer does not remedy such failure by July 16, 2022, but the Developer does remedy such failure by September 15, 2022, then Developer will pay the City \$15,000 on August 1 and \$15,000 on September 1, paying \$30,000 in total.)

Section 7.05. Legal Actions.

(a) Forum. Any legal actions related to or arising out of this Agreement, including any claims for which concurrent federal jurisdiction exists, must be filed and maintained in the District Court of Johnson County, Kansas; provided, however, that any actions related to or arising out of this Agreement for which exclusive federal jurisdiction exists must be filed and maintained in the Federal District Court in the District of Kansas. Developer shall not seek or be entitled to any dismissal or transfer in any action properly filed or maintained in accordance with the preceding forum selection provisions for any reason premised upon the inconvenience of either such forum.

(b) Applicable Law. The laws of the State of Kansas shall govern the interpretation and enforcement of this Agreement.

(c) Acceptance of Service of Process.

(i) In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

(ii) In the event that any legal action is commenced by the City against the Developer, service of process on the Developer or Developer's registered agent shall be made by personal service upon an officer or agent of the Developer or Developer's registered agent and shall be valid whether made within or without the State of Kansas or in any other manner permitted by Kansas law or permitted by the law of the jurisdiction where service is made.

Section 7.06. Inaction Not a Waiver of Default. Any failures or delays by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 7.07. Excusable Delays; Extension of Times of Performance.

(a) In addition to specific provisions of this Agreement, performance by a party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where the party seeking the extension has acted diligently and delays or defaults are due to events beyond the reasonable control of the party

such as but not limited to: default of other party; war; insurrection; strikes; labor shortages; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform (“Excusable Delays”).

(b) The time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any Excusable Delay of the foregoing causes. If and when any such Excusable Delays occur and impact the performance of this Agreement by the City or the Developer, such delayed Party shall provide notice thereof to the other Party, and the delayed Party may be granted such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays. In the case of any extension sought by the delayed Party for any other reason which will cause a failure to timely complete a portion of the Project as set forth on Exhibit G hereto, such extension shall only be granted with the approval of the other Party to this Agreement, which approval shall not be arbitrarily or unreasonably withheld. Nothing herein shall excuse either Party from any obligation of such Party to pay money hereunder, nor shall this Section excuse either Party from performance of its respective obligations because of a lack of funds or inability to obtain financing. Further, nothing herein shall excuse Developer from performance of its obligations hereunder due to the failure of the Developer to obtain fee title to all or any portion of the Project Site from the Project Site Owner.

ARTICLE VIII

RESERVED

ARTICLE IX

GENERAL PROVISIONS

Section 9.01. Expenses and CID Administrative Fee. Reference is hereby made to the Funding Agreement entered into by and between the City and the Developer prior to the Effective Date. The parties hereby agree that the Funding Agreement shall survive the execution of this Agreement and the formation of the CIDs, and the Developer hereby further agrees that to any extent not otherwise covered by the Funding Agreement, Developer shall be responsible for and pay, within thirty (30) days of receipt of an invoice, the reasonable fees of the City’s attorneys and consultants incurred in connection with the creation, amendment and implementation of the CIDs and this Agreement (including the negotiation of this Agreement), other related agreements, and any amendments thereto, and in connection with the review of certified expenditures for Eligible Expenses and the reimbursement of such Eligible Expenses, pursuant to the terms of Section 3.01. Additionally, the CID Sales Tax shall be used to pay the CID Administrative Fee. The CID Administrative Fee shall be due on the date the CID Sales Tax is received by the City from DOR (provided that the CID Act permits payment directly from the CID Sales Tax, and if not, within thirty (30) days of demand therefor by the City). The amount of \$50,000, paid by Developer under the Funding Agreement to the City, and any other amounts paid by Developer to the City under this Section 9.01, shall be deemed an Eligible Expense and reimbursable to Developer with CID Sales Tax.

Section 9.02. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

Section 9.03. Representations and Warranties of Developer. Developer represents and warrants to the City as follows:

(a) **Organization.** Developer is a Kansas limited liability company, duly formed and validly existing under the laws of the State of Kansas. Developer is duly authorized to conduct business in each other jurisdiction in which the nature of its properties or its activities requires such authorization. Developer shall (1) preserve and keep in full force and effect its corporate or other separate legal existence and (2) remain qualified to do business and conduct its affairs in the State of Kansas and each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification.

(b) **Authority.** The execution, delivery and performance by Developer of this Agreement are within such party's powers and have been duly authorized by all necessary action of such party.

(c) **No Conflicts.** Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the organizational documents of Developer or any provision of law, statute, rule or regulation to which Developer is subject, or to any judgment, decree, license, order or permit applicable to Developer, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which Developer is a party, by which Developer is bound, or to which Developer is subject.

(d) **No Consents.** No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution and delivery by Developer of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the performance by Developer of this Agreement or the consummation of the transactions contemplated hereby except for zoning, building and other customary permits to be obtained from the City or other governmental units.

(e) **Valid and Binding Obligation.** This Agreement is the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with the terms hereof.

(f) **Veracity of Certificates and Information Provided.** All information provided to the City by Developer, its Affiliates, its agents, or its contractors in any way related to the Project or this Agreement (including any information provided in the formation or the performance of this Agreement, and including any information provided in or related to any

Certificate of Expenditure, any certificate of insurance, or any request for approval under Article V above, or any inspection under Section 3.09 above or Section 9.07 below) is true, accurate, and complete to the best of Developer's actual knowledge. Developer has provided and will continue to provide the City with all information necessary to make any information previously provided by Developer not misleading.

Section 9.04. Time of Essence. Time is of the essence of this Agreement. The City and Developer will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 9.05. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, upon official action of the City's Governing Body approving said amendment, and by the execution of said amendment by the Parties or their successors in interest.

Section 9.06. Immunity of Officers, Employees and Members of the City and Developer. No personal recourse shall be had for the payment of the Pay-As-You-Go CID Financing or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement against any past, present or future officer, member, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and any liability of any such officers, members, directors, employees or agents is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. Furthermore, no past, present or future officer, member, employee or agent of the City shall be personally liable to the Developer, or any successor-in-interest of Developer under this Agreement, for any default or breach by the City.

Section 9.07. Right to Inspect. The Developer agrees that the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, inspect, audit, and copy, from time to time, all of the Developer's books and records relating to the Project as pertinent to the City's verification of Developer's performance of Developer's obligations hereunder.

Section 9.08. No Other Agreement. Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersedes all prior agreements, negotiations and discussions, both written and oral, relative to the subject matter of this Agreement and is a full integration of the agreement of the parties.

Section 9.09. Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In no such event shall the validity or enforceability of the remaining valid portions hereof be affected.

Section 9.10. Kansas Law; Conflicts with Ordinance. This Agreement shall be construed in accordance with the laws of the State of Kansas. To the extent there is a conflict between this Agreement and any CID Ordinance, such CID Ordinance shall be controlling.

Section 9.11. Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas.

Section 9.12. Invalidity of Any Provisions. If for any reason any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

Section 9.13. Headings. The Article and Section headings shall not be treated as a part of this Agreement or as affecting the true meaning of the provisions hereof.

Section 9.14. Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

(a) To the Developer:

Travis Schram, President
Grata Development, LLC
6300 W. 143rd Street, Suite 200
Overland Park, Kansas 66223

With copies to:

Curtis Petersen, Esq.
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

(b) To the City:

Jim Pruetting, City Administrator
City of Gardner
120 E. Main Street
Gardner, KS 66030

With copies to:

Ryan Denk, Esq.
McAnany, Van Cleave & Phillips, P.A.
10 E. Cambridge Circle Drive, Suite 300
Kansas City, Kansas 66103

and

Tyler Ellsworth, Esq.
Kutak Rock LLP
2300 Main Street, Suite 800
Kansas City, Missouri 64108

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by certified mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

Section 9.15. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 9.16. Entire Agreement. Together with the exhibits hereto, this Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces all prior oral or written agreements concerning the subject matter hereof.

Section 9.17 Reserved.

Section 9.18. Survival. Notwithstanding the termination of this Agreement, Developer's obligations of insurance and indemnification set out in Article II shall survive the termination of this Agreement to the extent that any incident giving rise to a claim, suit, judgment or demand occurred during Term.

Section 9.19. Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

Section 9.20. Tax Implications. The Developer acknowledges and represents that (a) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (b) the Developer is relying solely upon its own tax advisors in this regard.

Section 9.21. Required Disclosures. The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in light of the circumstances under which it was made, not misleading.

Section 9.22. Joint and Several Liability. If more than one entity shall comprise the "Developer" hereunder, then the obligations hereunder shall be joint and several, and each of those entities shall be jointly and severally liable to the City hereunder.

Section 9.23. Amendment to Carry Out Intent. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the Parties shall take such reasonable measures including but not limited to reasonable amendment of this Agreement, to cure such invalidity where the invalidity contradicts the clear intent of the parties in entering into this Agreement; provided, however, nothing herein is intended to bind a future Governing Body of the City in a manner prohibited by the laws of the State of Kansas.

Section 9.24. Cash Basis and Budget Laws. The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1100 *et seq.*), the Budget Law (K.S.A. 79-2935 *et seq.*), and other laws of the State of Kansas. This Agreement shall be construed and interpreted in such a manner as to ensure the City shall at all times remain in conformity with such laws.

Section 9.25. Effective Date. Submission of any drafts of this Agreement by one party to another is not intended by any party to be an offer to enter into a legally binding contract regarding the subject matter hereof, and the parties shall be legally bound by this Agreement only after all parties have fully executed and delivered to each other their respective counterparts of this Agreement. Upon delivery of all counterparts, this Agreement shall be effective as of the Effective Date first written above.

[remainder of page left blank intentionally]

GRATA DEVELOPMENT, LLC,
a Kansas limited liability company

By: _____
Travis Schram
President

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

On this _____, 2022, before me, a Notary Public in and for said County and State, came Travis Schram, President of Grata Development, LLC, a Kansas limited liability company, who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said company, and such persons duly acknowledged the execution of the same to be the act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL]

Notary Public in and for said County and State

My Commission Expires: _____

JOINDER BY PROJECT SITE OWNER

Day3, LLC is currently the fee owner of portions of the Project Site and hereby affirms: (a) Project Site Owner's execution of this Agreement to allow for Developer's construction of the Project and to create certain obligations that run with the land; and (b) its intention to convey its interest in the Project Site to Developer to allow for Developer's fulfillment of its obligations under this Agreement.

DAY3, LLC,
a Missouri limited liability company

By: Travis Schram, Manager

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

On this _____, 2022, before me, a Notary Public in and for said County and State, came Travis Schram, Manager of Day3, LLC, a Missouri limited liability company, who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said company, and such persons duly acknowledged the execution of the same to be the act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL]

Notary Public in and for said County and State

My Commission Expires: _____

ANNEX OF DEFINITIONS

The following terms have the following meanings:

“Affiliate” means a person or entity that is controlled by Developer (which shall include serving as managing member for such entity), which controls Developer, or that is under common control with Developer. Control shall be defined as possessing the right to make decisions binding upon the party subject to such control.

“Agreement” means this Second Amended and Restated Development Agreement, as the same may be amended from time to time in accordance with the terms and conditions hereof.

“Anchor CID” means the CID established pursuant to the CID Act and Article III hereof to pay costs associated with construction of the Anchor CID Improvements.

“Anchor CID Cap” means, with respect to the Anchor CID, the limitations on the amount of Anchor CID Sales Tax available to Developer for reimbursement of Eligible Expenses as set forth in Section 3.04 hereof.

“Anchor CID Improvements” means improvements within the Anchor CID, including the Retail Anchor, the costs of which are Eligible Expenses and reimbursable hereunder.

“Anchor CID Improvement Costs” means the costs for construction and completion of the Anchor CID Improvements.

“Anchor CID Sales Tax” means the CID Sales Tax in the amount of one percent (1.0%) levied pursuant to the CID Act on retail sales generated within the Anchor CID. The Anchor CID Sales Tax shall only apply to, and only capture, CID Sales Tax generated from the Retail Anchor.

“Applicable Laws and Requirements” shall mean any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by government authorities (including the City), and all requirements of any insurers. Applicable Law and Requirements shall include, without limitation, the CID Act, the Kansas Cash Basis Law (K.S.A. 10-1100 *et. seq.*), Budget Law (K.S.A. 75-2935 *et. seq.*), and the Kansas False Claims Act (K.S.A. 75-7501 *et seq.*).

“Bond Counsel” means Kutak Rock LLP, Kansas City, Missouri, or such other nationally recognized firm of attorneys selected by the City with expertise in community improvement districts in the State.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.* as referred to in Section 2.07(b) hereof.

“Certificate of Expenditure” means a certificate of expenditure to be submitted to the City by Developer pursuant to Section 3.09 above for seeking reimbursement of Eligible Expenses, the form of which is attached hereto as **Exhibit H**.

“CIDs” means, collectively, the Common CIDs and the Anchor CID.

“CID Act” means K.S.A. 12-6a26 through 12-6a36 and all additions and amendments thereto.

“CID Administrative Fee” means an amount equal to three percent (3%) of the CID Sales Tax proceeds deposited into the CID Sales Tax Funds established hereunder, calculated on an annual basis during the Term but not to exceed \$50,000 per year.

“CID Caps” means, collectively, the Anchor CID Cap and the Common CID Cap.

“CID Collection Period” means the period that commences on the date that each CID Sales Tax is first imposed and concluding upon the date which is the earlier of the following: (a) the date that Developer has been reimbursed for all Eligible Expenses by Pay-As-You-Go CID Financing; or (b) that date which is twenty two (22) years from the date that the CID Sales Tax is first imposed, as set forth in Section 3.04 hereof.

“CID Petitions” means the petitions for creation of the Anchor CID and each of the four (4) community improvement districts comprising the Common CID. Each CID Petition submitted by the Developer shall include the information required under the CID Act, together with a concept plan in substantially the form reflected on Exhibit K attached hereto, which will be consistent with the first-class, high-quality uses of the Commercial Improvements described in Section 2.01(a) hereof. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that the building number, type, size, location, and other aspects of the Project depicted on Exhibit K or any future concept plan accompanying a CID Petition are conceptual in nature and may be adjusted by Developer in its sole discretion from time to time in response to market demand.

“CID Sales Tax” or “CID Sales Taxes” means the tax or taxes authorized by K.S.A. 12-6a31 and amendments thereto, and as more particularly described in Article III hereof, including the Anchor CID Sales Tax and the Common CID Sales Taxes.

“CID Sales Tax Fund” and “CID Sales Tax Funds” mean, as applicable, each separate fund established by the City for deposit of each separate CID Sales Tax received from the State collected within each CID and that is used to finance the CID Improvements pursuant to the CID Act as set forth in Article III hereof.

“City” means the City of Gardner, Kansas.

“City Indemnified Parties” means the City, its employees, agents, independent contractors and consultants, collectively for purposes of the indemnification provisions set forth in Section 2.07 hereof.

“City Infrastructure Improvements” means, collectively, the Electric Improvements, Sewer Improvements, and Water Improvements to and within the Project Site which the City is obligated to design, fund, and construct pursuant to this Agreement.

“Commercial Improvements” means, collectively, the improvements described in Section 2.01(a), including subsections 2.01(a)(i), (ii), and (iii).

“Commission” means the Kansas Human Rights Commission as referred to in Section 2.08(b) hereof.

“Common CID Cap” means, with respect to the Common CID, the limitations on the amount of Common CID Sales Taxes available to Developer for reimbursement of Eligible Expenses as set forth in Section 3.04 hereof and Exhibits J-1 through J-4 and Schedule 3.04 attached hereto.

“Common CIDs” means, collectively, the Phase 1 Common CID, Phase 2 Common CID, Phase 3 Common CID, and Phase 4 Common CID established pursuant to the CID Act and Article III hereof and described on Exhibits J-1 through J-4 attached hereto to pay for or reimburse Common CID Improvement Costs and any other costs as specified herein; provided, however, that the Common CIDs shall not include or overlap with the Anchor CID.

“Common CID Improvements” means that portion of the Project comprised of the Natural Gas Improvements, the Street Improvements, the Commercial Improvements described on Exhibits J-1 through J-4 attached hereto, the City Infrastructure Improvements, and the City street and traffic control projects referenced in Section 3.01 hereof, the costs of which are Eligible Expenses and reimbursable hereunder. The Common CID Improvements do not include any of the Anchor CID Improvements.

“Common CID Improvement Costs” means the costs for design, construction, and completion of the Common CID Improvements.

“Common CID Sales Taxes” means the CID Sales Taxes in the amount of one percent (1.0%) levied pursuant to the CID Act on retail sales generated within the Common CIDs.

“Developer” means Grata Development, LLC, a Kansas limited liability company.

“Developer Infrastructure Improvements” means, collectively, the Common CID Improvements (less the City Infrastructure Improvements) and all other infrastructure improvements to and within the Project Site which the Developer is obligated to design, fund, and construct pursuant to this Agreement.

“DOR” means the Kansas Department of Revenue as set forth in Section 3.02.

“Effective Date” means the date set forth on the first page of this Agreement.

“Electric Improvements” means the electric transmission network and related appurtenances depicted on Exhibit E attached hereto to accommodate all of the uses identified in Section 2.01 hereof. The Electric Improvements exclude any connections between the transmission network depicted on Exhibit E and such structures, facilities, and improvements as are constructed on the Project Site.

“Eligible Expenses” means those Common CID Improvement Costs and Anchor CID Improvement Costs that are “costs” or a “project” (as defined in the CID Act and as authorized for reimbursement under this Agreement) and thus eligible for reimbursement with CID Sales Tax proceeds under the CID Act and this Agreement and subject to the CID Caps, and any other costs that are reimbursable to Developer hereunder; provided, however, that such Eligible Expenses shall expressly exclude any Common CID Improvement Costs for which Developer received an Excise Tax credit pursuant to Section 2.06; and provided, further, that such Eligible Expenses shall include costs for buildings, structures, site work, site improvements, furnishings, fixtures, and equipment, and expressly exclude operating costs, marketing costs, travel costs, legal fees for counsel to the Developer or an Affiliate, development fees, or brokers’ commissions. Eligible Expenses reimbursable from CID Sales Taxes in each phase of the Common CIDs shall include the Developer’s cost to acquire the land included in each such Common CID, provided that reimbursement shall be at the rate of \$21,344.40 per acre which reflects the acquisition price paid by an Affiliate of the Developer to acquire such land in 2013.

“Excise Tax” means the excise tax levied and collected by the City as described in Section 2.06 hereof.

“Excusable Delays” means the delays for performance set forth in Section 7.07 hereof.

“Funding Agreement” means the agreement entered into by and between the City and the Developer’s predecessor, Day3, LLC, dated March 7, 2016.

“GAAP” means generally accepted accounting principles.

“Governing Body” means the City Council of the City.

“IRBs” means those certain industrial revenue bonds which may be used to obtain an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment and furnishings and to obtain an abatement of ad valorem property taxes as set forth in Article IV of this Agreement.

“Multifamily Residential Improvements” means the improvements described in Section 2.01(b)(ii).

“Natural Gas Improvements” means any and all gas lines and related appurtenances which are necessary, in the Developer’s reasonable discretion, to provide natural gas service to and within the Project Site.

“Original Agreement” means the Development Agreement dated as of October 7, 2019, by and between the City and Grata Development, LLC.

“Parties” means the City and the Developer.

“Pay-As-You-Go CID Financing” means a method of financing pursuant to K.S.A. 12-6a34, in which the costs of the CID Improvements are financed without notes or bonds, and the costs are reimbursed as CID Sales Taxes are deposited in the CID Sales Tax Funds as set forth in Section 3.04 hereof.

“Performance Milestones” means the development milestones for the Project which are set forth on **Exhibit G** attached hereto.

“Phase A Arterial” means that portion of the Street Improvements consisting of a three-lane arterial public street, including standard turn lanes at its intersection with 175th Street, such other turn lanes and appurtenances as are required by Applicable Law and Requirements, and further including sufficient right-of-way dedicated to the City to accommodate construction by the City of a fourth lane at a future date, as generally depicted in red on **Exhibit F** attached hereto.

“Phase B Arterial” means that portion of the Street Improvements consisting of a three-lane arterial public street, including such turn lanes and appurtenances as are required by Applicable Law and Requirements, and further including sufficient right-of-way dedicated to the City to accommodate construction by the City of a fourth lane at a future date, as generally depicted in green on **Exhibit F** attached hereto.

“Phase 1 Common CID” means one of the four (4) community improvement districts comprising the Common CID as described and depicted on **Exhibit J-1** attached hereto.

“Phase 1 West Interceptor” means the Phase 1 west interceptor sewer as defined on **Exhibit G** attached hereto.

“Phase 2 Common CID” means one of the four (4) community improvement districts comprising the Common CID as described and depicted on **Exhibit J-2** attached hereto.

“Phase 2 West Interceptor” means the Phase 2 west interceptor sewer as defined on Exhibit G attached hereto.

“Phase 3 Common CID” means one of the four (4) community improvement districts comprising the Common CID as described and depicted on Exhibit J-3 attached hereto.

“Phase 4 Common CID” means one of the four (4) community improvement districts comprising the Common CID as described and depicted on Exhibit J-4 attached hereto.

“PILOT Agreement” means any payment-in-lieu-of-taxes agreement between the City and the Developer (or its permitted assigns) for any portion of the Project Site pursuant to Article IV hereof.

“Platted Phase” means each commercial and/or residential phase of the Project which is separately platted by the Developer in the course of developing and constructing the Project.

“Project” means the improvements to the Project Site as described in Section 2.01 hereof.

“Project Site” means that certain real property generally located southeast of the Interstate 35 and 175th Street interchange as legally described on Exhibit A and generally depicted on Exhibit B, each as attached hereto.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as referred to in Section 2.07(b) hereof.

“Retail Anchor” means the improvements described in Section 2.01(a)(ii) hereof.

“Sewer Improvements” means, subject in all respects to finalizing design and obtaining approvals from the Kansas Department of Health and Environment, the trunk lines and related appurtenances as generally depicted on Exhibit C attached hereto and which are necessary, in the City’s reasonable discretion (including discretion as to the need for, and locations of, any and all lift stations, package plants, force mains, and similar improvements), to provide adequate sanitary sewer service to the Project Site to accommodate all of the uses identified in Section 2.01 hereof. The Sewer Improvements shall not include non-trunk sewer lines necessary to provide service within the Project Site.

“State” means the State of Kansas.

“Street Improvements” means, collectively, (i) the Phase A Arterial; (ii) the Phase B Arterial; (iii) the public street improvements, including such turn lanes and appurtenances as are required by Applicable Law and Requirements, as generally depicted in yellow on Exhibit F attached hereto; and (iv) the private street improvements, including such turn lanes and appurtenances as are required by Applicable Law and Requirements, as generally depicted in purple on Exhibit F attached hereto.

“Term” means that certain period from the Effective Date through that date on which this Agreement expires as set forth in Section 6.01 hereof.

“Water Improvements” means such water line extension and related appurtenances which are necessary, in the City’s reasonable discretion, to provide water service to the Project Site, the location of which is set forth on Exhibit D attached hereto. The Water Improvements shall not include water lines necessary to provide service within the Project Site.

[remainder of page left blank intentionally]

EXHIBITS

Exhibit A:	Project Site Legal Description
Exhibit B:	Project Site Map
Exhibit C:	Map of Sewer Improvements
Exhibit D:	Map of Water Improvements
Exhibit E:	Map of Electric Improvements
Exhibit F:	Map of Street Improvements
Exhibit G:	Performance Milestones
Exhibit H:	Form of Certificate of Expenditure
Exhibit I:	Form of PILOT Agreement
Exhibit J-1:	Map and Description of Phase 1 Common CID
Exhibit J-2:	Map and Description of Phase 2 Common CID
Exhibit J-3:	Map and Description of Phase 3 Common CID
Exhibit J-4:	Map and Description of Phase 4 Common CID
Exhibit K:	Example Concept Plan for Phase of Common CID

SCHEDULES

Schedule 3.04: Common CID Cap Calculation

Schedule 4.01: IRB Origination Fees

EXHIBIT A

PROJECT SITE LEGAL DESCRIPTION

All that part of the Northwest Quarter of Section 29, Township 14 South, Range 23 East, lying South and East of Interstate Highway 35, described as follows: BEGINNING at the Southwest corner of the Northwest Quarter of Section 29, Township 14 South, Range 23 East; thence North 2 degrees 17 minutes 30 seconds West along the West line of the Northwest Quarter of said Section 29 a distance of 1363.78 feet to a point on the Southeasterly right of way line of Interstate Highway 35 as established in Volume 3475, Page 774; thence in a Northeasterly direction along said right of way line and along a curve to the right whose initial tangent bears North 49 degrees 41 minutes 33 seconds East, having a radius of 11,309.16 feet, through a central angle of 0 degrees 10 minutes 52 seconds, an arc distance of 35.76 feet to a point; thence North 56 degrees 31 minutes 20 seconds East along said right of way line a distance of 543.85 feet to a point; thence North 68 degrees 50 minutes 34 seconds East along said right of way line a distance of 440.47 feet to a point; thence North 87 degrees 46 minutes 28 seconds East along said right of way line a distance of 1460.43 feet to a point; thence South 87 degrees 20 minutes 26 seconds East along said right of way line a distance of 327.30 feet to a point; thence North 66 degrees 35 minutes 54 seconds East along said right of way line a distance of 14.46 feet to a point on the East line of the Northwest Quarter of said Section 29; thence South 2 degrees 05 minutes 58 seconds East along the East line of the Northwest Quarter of said Section 29 a distance of 1830.10 feet to the Southeast corner thereof; thence South 88 degrees 39 minutes 43 seconds West along the South line of the Northwest Quarter of said Section 29 a distance of 2704.50 feet to the POINT OF BEGINNING, containing 4,780,096 Square Feet or 109.7359 Acres, more or less.

Also,

All that part of the Northeast Quarter of Section 29, Township 14 South, Range 23 East, lying South and East of Interstate Highway 35, described as follows: BEGINNING at the Southwest corner of the Northeast Quarter of Section 29, Township 14 South, Range 23 East; thence North 2 degrees 05 minutes 58 seconds West along the West line of the Northeast Quarter of said Section 29 a distance of 1830.10 feet to a point on the Southeasterly right of way line of Interstate Highway 35 as established in Volume 3475, Page 762; thence North 66 degrees 35 minutes 54 seconds East along said right of way line a distance of 296.48 feet to a point; thence North 34 degrees 50 minutes 13 seconds East along said right of way line a distance of 225.00 feet to a point; thence North 11 degrees 50 minutes 40 seconds East along said right of way line a distance of 437.78 feet to a point; thence North 83 degrees 24 minutes 39 seconds East along said right of way line a distance of 188.84 feet to a point; thence North 87 degrees 58 minutes 01 seconds East along said right of way line a distance of 1050.00 feet to a point; thence North 73 degrees 02 minutes 08 seconds East along said right of way line a distance 155.24 feet to a point on the South right of way line of 175th Street as established in Volume 4458, Page 126; thence North 87 degrees 58 minutes 01 seconds East along the South right of way line of 175th Street a distance of 744.69 feet to a point on the West right of way line of Clare Road; thence South 18 degrees 44 minutes 58 seconds East along the West right of way line of Clare road a distance of 135.66 feet to a point; thence South 1 degree 50 minutes 26 seconds East along the West right of way line of Clare Road a distance of 2500.70 feet to a point on the South line of the Northeast Quarter of said Section 29; thence South 88 degrees 39 minutes 43 seconds West along the South line of the Northeast Quarter of said Section 29 a distance of 2677.73 feet to the POINT OF BEGINNING, containing 6,656,573 Square Feet or 152.9139 Acres, more or less.

EXHIBIT B

PROJECT SITE MAP



	PHASE 1	PHASE 2	PHASE 3	PHASE 4
INLINE	A: 31,200	G: 21,600	L-O: 168,400	R-T: 175,100
HOTEL	F: 50,000		P: 50,000 Q: 50,000	
RESTAURANT	C: 5,700 D: 5,700 E: 5,700	I: 5,700 J: 5,700 K: 5,700		U: 9,000 V: 7,000
CONVENIENCE	B: 9,000			
THEATRE		H: 50,000		
TOTAL	107,300	88,700	268,400	191,100

FULL BUILD-OUT TOTAL: 655,500 SF

MAP OF SEWER IMPROVEMENTS



MAP OF WATER IMPROVEMENTS

MAP OF WATER IMPROVEMENTS



EXHIBIT E

MAP OF ELECTRIC IMPROVEMENTS



EXHIBIT F

MAP OF STREET IMPROVEMENTS



EXHIBIT G

PERFORMANCE MILESTONES

- As of the Effective Date, the City has completed the Water Improvements.
- As of the Effective Date, the City has completed the Sewer Improvements except for the west lift station, Phase 1 of the west interceptor sewer serving the Multifamily Residential Improvements (the “Phase 1 West Interceptor”), and the northern extension of the west interceptor sewer serving the Commercial Improvements in the Phase 2 Common CID and Phase 3 Common CID (the “Phase 2 West Interceptor”). The Phase 1 West Interceptor is under construction and will be completed by April 1, 2022. Design for the west lift station is 90% complete and construction will be completed by August 1, 2022, subject to Permitted Delays, including supply chain disruption. The City shall complete the Phase 2 West Interceptor at one time, in a single phase, within one hundred twenty (120) days following: (i) the recording of a final plat for Commercial Improvements in any portion of the Phase 2 Common CID or Phase 3 Common CID and the dedication and acceptance of easements and rights-of-way reflected on such final plat; and (ii) completion of the design of such applicable portion of the Sewer Improvements.
- City shall complete the Electric Improvements providing service to each Platted Phase of the Project within ninety (90) days following the date of completion of certain work contemplated by Section 6.08 hereof within such Platted Phase, including grading to within six (6) inches of final grade and completion of construction of all streets, storm drains, water lines, and sewer lines.
- Developer shall design, fund, and construct the Phase A Arterial and the Phase B Arterial, and complete all associated work, not later than ten (10) months following the Effective Date of this Agreement.
- Developer shall design, fund, and construct the public Street Improvements depicted in yellow and located east of the Phase A Arterial on **Exhibit F** attached hereto no later than January 1, 2031.
- Developer shall obtain building permits for at least thirty (30) single-family residences located within the Project Site not later than twelve (12) months following the Effective Date of this Agreement. Permits obtained prior to the Effective Date of this Agreement shall be credited to the initial 12-month period that follows the Effective Date of this Agreement. In each twelve-month period thereafter, Developer shall obtain at least thirty (30) additional single-family building permits until reaching a total of at least three hundred (300) such permits. If Developer obtains more than thirty (30) permits in any such twelve-month period, the excess will be applied to subsequent twelve-month periods.

EXHIBIT H

FORM OF CERTIFICATE OF EXPENDITURE

Date: _____

Certificate # _____

Governing Body of the
City of Gardner, Kansas

In accordance with the Development Agreement dated as of October __, 2019 (as amended from time to time, the "Agreement"), between the City of Gardner, Kansas (the "City"), and Grata Development, LLC, a Kansas limited liability company (the "Developer"), the Developer hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to the Developer, as follows:

1. To the best of my knowledge, all amounts are Eligible Expenses (as defined in the Agreement) that are reimbursable to the Developer pursuant to the Agreement and the CID Act (as defined in the Agreement).

2. All amounts have been advanced by the Developer for eligible expenses requested in this Certification and represent the fair value of work, materials or expenses.

3. No part of such amounts has been the basis for any previous request for reimbursement under the Agreement.

The Developer further certifies that the Developer is in compliance, in all respects, with all terms of the Agreement.

The total amount of reimbursement requested by this Certification is \$ _____ which amount is itemized on **Exhibit 1** attached hereto and which **Exhibit 1** includes _____ page(s), is incorporated herein by reference and has been initialed by the authorized representative of the Developer who signed this Certificate.

GRATA DEVELOPMENT, LLC,
a Kansas limited liability company

By: _____

Name: _____

Title: _____

Date: _____
Certificate # _____

\$ _____ Amount of eligible expenses requested by this
Certification # _____

\$ _____ Amount of eligible expenses for this
Certification # _____ Disapproved

\$ _____ Amount of eligible expenses for this
Certification # _____ Approved

CITY OF GARDNER, KANSAS

By: _____

Name: _____

Title: City Administrator

EXHIBIT 1 TO
CERTIFICATION OF EXPENDITURES

PAGE ____ OF ____

Date: _____
Certificate # _____

Description of Expense (attach additional supporting documentation)	Amount of Expense
	\$__
	\$__
	\$__
	\$__
Total Expenses	\$__
	_____ Initials of Developer

EXHIBIT I

FORM OF PILOT AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (this "Agreement"), is made and entered into as of _____, 20__, by and between _____, a _____ limited liability company (the "Company") and the **CITY OF GARDNER, KANSAS**, a municipal corporation (the "City").

For and in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the parties understand and agree as follows:

1. Tax Exemption; Payment in Lieu of Taxes. In consideration of the issuance by the City of its industrial revenue bonds pursuant to K.S.A. 12-1740 *et seq.* in the aggregate principal amount not to exceed \$_____ (the "Bonds"), in a single series, to finance the cost of acquiring a leasehold interest in certain real property and acquiring, constructing and equipping a multifamily housing project to be located at _____ (the "Project") to be leased by the Company to the City pursuant to a Base Lease (the "Base Lease"), and leased back from the City to the Company, or its successors and assigns with City consent pursuant to a Lease Agreement (the "Lease"), and in consideration of Company's execution of a Base Lease and the Lease. In further consideration of the laws of the State of Kansas (the "State") granting an exemption from ad valorem real property taxation for the period of up to ten (10) years, commencing with the first calendar year after the calendar year in which Bonds are issued ("Abatement Term") solely for the portion of the Project acquired or constructed with Bond proceeds and described in the bond trust indenture, by and between the City and the bond trustee named therein, authorizing said Bonds, Company agrees to make payments in lieu of ad valorem real property taxes (a "PILOT") in the amounts specified herein for the term of the Abatement Term in the manner provided for herein. The Project in excess of the existing assessed valuation in the calendar year in which the Bonds are issued (the "Base Year") acquired or constructed with the proceeds of the Bonds up to an aggregate amount not to exceed \$_____ is referred to herein as the "Tax Abated Project Portion".

2. Statement of Intention. The Tax Abated Project Portion consists of acquiring, constructing and equipping an approximately xx-unit multifamily housing project. The cost of acquiring, constructing and equipping the Tax Abated Project Portion is approximately \$_____.

3. Amount of Payments; Place of Payment. As permitted by K.S.A. 79-201a, and subject to the provision of this Agreement in lieu of all general ad valorem real and personal property taxes on the Tax Abated Project Portion for the ten (10) calendar years commencing with the first calendar year after the calendar year in which the Bonds are issued to finance the Tax Abated Project Portion, Company shall pay by separate check to the Treasurer of Johnson County, Kansas, or other appropriate officer as required by State law, a PILOT in an amount equal to twenty-five percent (25%) of the amount of general ad valorem real and personal property taxes for such Tax Abated Project Portion over the Base Year which would have been due and payable by Company if such Tax Abated Project Portion were taxable as determined in accordance with Section 4 below, to be distributed as and/or as a part of the general ad valorem tax collections for all taxing subdivisions in which the Project is located. In no event shall the abatement described in this Agreement have the effect of abating any mill levy which cannot be abated pursuant to Kansas law or abating any special assessment.

The PILOT shall be billed to Company by statement of the City Clerk or by Johnson County on behalf of the City issued on or about November 20th of each year and shall be paid each year of the Abatement Term as follows: one half (1/2) on or before December 20th in respect of the PILOT for the then current calendar year, and the remainder of such PILOT for such calendar year on or before May 10th of the following calendar year, or as otherwise required by law or invoice of Johnson County.

4. Calculation and Distribution of Payment. The amount of such PILOT will be determined by the Johnson County Clerk in the same manner and according to the same statutory procedure as general ad valorem taxes, real and personal, are determined, using the valuations determined by the Johnson County Appraiser's office under the same laws, rules and procedures for which real and personal property taxes are determined for all taxpayers within the taxing jurisdiction(s), including the right to appeal and challenge the valuations as determined by the Johnson County Appraiser's Office. Such payments shall be distributed to all applicable taxing subdivisions in Johnson County as provided in K.S.A. 12-1742.

5. Protest of Appraised Valuation Company will make all PILOTs required by this Agreement; however, Company reserves the right to make such payment under protest pending its timely appeal of the valuation as determined by the Johnson County Appraiser's Office. However, Company may not appeal its appraised valuation to an amount below the projected appraised valuation of the improvements (excluding land) of the Project submitted by the Company to the City for purposes of completing the cost-benefit analysis pursuant to K.S.A. 12-1749d (the "Base Valuation"), without first obtaining the City's consent, which consent shall not be unreasonably withheld. If Company appeals the appraised value and the appraised value of the Project is adjusted by either the Johnson County Appraiser's Office or by the Board of Tax Appeals to an amount below the Base Valuation, the PILOT shall automatically increase in proportion to the amount to the Project's appraised valuation falls below the Base Valuation. If the appraised value is independently adjusted below the Base Valuation by the Johnson County Appraiser during the Abatement Term as a result of market conditions and not from appeal of the Company, there shall be no adjustment in the Base Valuation. If after appeal, the valuation is adjusted downward, nothing herein shall create an obligation on behalf of the City to return all or a portion of any PILOT received by the City or any other taxing entity, however in such event, Company shall reduce its subsequent PILOT by the amount of any overpayment previously made by Company under protest. If the subsequent payment is not sufficiently large to fully credit the overpayment, the credit may be carried forward to subsequent payment(s) during the Abatement Term. If after an appeal, the valuation is increased, Company shall pay an additional amount for the year protested, calculated based on the revised valuation, with its subsequent PILOT.

6. Application of Abatement.

(a) Company shall not utilize any of the Project property for which it is requesting or receiving a tax exemption for any purposes that do not qualify for a property tax exemption pursuant to K.S.A. 79-201a *Second or Twenty-Fourth*.

(b) Company shall not remove any personal property purchased with proceeds of the Bonds at any time during the Abatement Term without the prior written consent of the City.

(c) The Project shall comply in all material respects with all applicable building and zoning, health, environmental and safety ordinances and regulations and all other applicable laws, rules and regulations.

The Company's failure to comply with the conditions provided in this Section shall constitute a default under this Agreement and the Lease.

7. Abatement Standards.

(a) **Minimum Investment.** The ten (10) year Abatement Term is conditioned upon the Company making a minimum \$ _____ capital investment in the Tax Abated Project Portion through the issuance of Bonds no later than _____, 20__ ("Minimum Capital Investment").

(b) **Application for Abatement.** The City and Company shall compile the information necessary to file the application for exemption (currently Form IRBX) with Johnson County, Kansas

and/or the Kansas Board of Tax Appeals. If Company is the party required to file the application for exemption (e.g. in a lease/leaseback arrangement), Company shall file such application no later than February 15 of the year following the calendar year in which the Bonds have been issued. Company shall deliver the City a copy of the application for exemption upon submission to Johnson County, Kansas and/or the Kansas Board of Tax Appeals. Company shall be responsible for paying the application fee at the time of filing the application for exemption.

(c) **Annual Certification & Administrative Fee.** Each year of the Abatement Term, the Company is required to complete and submit certain information to confirm compliance with this Agreement (the “Annual Certification”). The Annual Certification shall be provided in the form and manner requested by the City and shall be submitted no later than February 10 of each year for the term of the abatement unless otherwise agreed, in writing, by the City. The information contained in the Annual Certification shall be used by the City Clerk to make its annual certification of compliance required by the Johnson County Treasurer. [The Annual Certification shall be accompanied by the City’s annual, non-refundable administrative fee.] Failure to provide the Annual Certification or pay the required administrative fee shall be an Event of Default hereunder.

8. Inspection. The City or its duly authorized agents may, upon reasonable request, inspect the Project and all books and records of Company for compliance with this Agreement. Upon written request, Company agrees to reasonably cooperate with the City to provide evidence of its compliance with the terms of this Agreement.

9. Approval of Exemption. This Agreement is conditioned on the issuance by the Kansas Board of Tax Appeals of an order exempting the Tax Abated Project Portion from ad valorem taxation in accordance with Kansas law, including K.S.A. 79-201a *et seq.* or K.S.A. 74-50,115. The City will utilize its commercially reasonable efforts to facilitate this process on behalf of Company.

10. Events of Default; Remedies.

(a) If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an “Event of Default” hereunder:

(1) the Company shall fail to pay any PILOT in a timely manner or perform any of its obligations hereunder, provided the Company shall be provided written notice of any such default and a thirty (30) day period to cure the same;

(2) the Company shall breach any covenant contained herein or any representation of the Company contained herein shall prove to be materially false or erroneous; provided the Company shall be provided written notice of any such default and a thirty (30) day period to cure the same;

(3) the Company shall fail to comply with any of the provisions of this Agreement, including but not limited to Sections 7 or 8 herein after written notice and a thirty (30) day cure period; or

(4) the Company shall be in default under the Lease after any applicable notice and cure period set forth therein.

(b) If such Event of Default occurs, this Agreement may be terminated by written notice to the Company from the City. Such termination shall be effective immediately following delivery of such written notice, subject to subsection (d). Upon the termination of this Agreement, the Company shall

make a payment to the City (or as the City may otherwise direct) in an amount equal to the sum of (i) all due but unpaid PILOTs attributed to prior calendar years, (ii) the pro rata total PILOTs that would be due with respect to the current calendar year, (iii) the pro rata amount of any ad valorem real property taxes that would be due for the remaining portion of the current calendar year assuming the Tax Abated Project Portion of the Project were not Exempt Property, and (iv) the amount of any costs, expenses and attorneys' fees incurred by the City as a result of such Event of Default and in enforcing this Agreement.

(c) Any amounts due hereunder which are not paid when due shall bear interest at the interest rate imposed by Kansas law on overdue ad valorem taxes from the date such payment was first due. In addition, amounts payable hereunder in lieu of ad valorem taxes that are not paid when due shall be subject to the same penalties imposed by Kansas law on overdue ad valorem taxes.

(d) The first time Company should fail to make any required payment hereunder, the City will provide Company thirty (30) days' notice of its intention to terminate this Agreement and provide it the opportunity to cure within the thirty (30) day period. Any subsequent time the Company should fail to make any required payment hereunder, the City will provide Company five (5) days' notice of its intention to terminate this Agreement and provide it the opportunity to cure within the five (5) day period. No notice is required to terminate this Agreement for a default under the Lease that is not cured within the time period permitted under the Lease.

(e) This Agreement is conditioned upon the issuance of Bonds for the acquisition, construction and equipping of the Tax Abated Project Portion. This Agreement shall automatically terminate without notice or opportunity to cure on _____ unless (i) the Bonds have been issued by the City, or (ii) the Company has obtained from the City a building permit for the Project and is diligently pursuing construction to completion.

11. General Matters

(a) **Counterparts.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed to be an original and all of which shall constitute the same instrument.

(b) **Assignment.** This Agreement may not be assigned and the benefits of this Agreement may not be transferred to any assignee of the Lease without the prior written consent of the City which will not be unreasonably delayed or withheld, provided that the City may condition any consent upon execution and delivery of an assignment and assumption agreement satisfactory to the City. Notwithstanding the foregoing, the City hereby consents to the assignment of this Agreement to _____ ("_____"), upon delivery to the City of a written assignment and assumption agreement satisfactory to the City or a copy of certificate of merger of Company into _____.

(c) **Titles and Subheadings.** Titles and subheadings used in this Agreement are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement.

(d) **No Waiver.** No waiver by the City of any breach of this Agreement shall be construed to be a waiver of any other or subsequent breach.

(e) **Notice.** All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

(i) To the Company:

Travis Schram, President
Grata Development, LLC
6300 W. 143rd Street, Suite 200
Overland Park, Kansas 66223

With copies to:

Curtis Petersen, Esq.
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

(ii) To the City:

Jim Pruetting, City Administrator
City of Gardner
120 E. Main Street
Gardner, KS 66030

With copies to:

Ryan Denk, Esq.
McAnany, Van Cleave & Phillips, P.A.
10 E. Cambridge Circle Drive, Suite 300
Kansas City, Kansas 66103

and

Tyler Ellsworth, Esq.
Kutak Rock LLP
2300 Main Street, Suite 800
Kansas City, Missouri 64108

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

(f) **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Kansas.

(g) **Entire Agreement.** Subject to the Bond documents, this Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, covering the same subject matter. This Agreement may only be modified or amended through the Bond documents or upon written instrument executed by the parties required to consent to such amendment.

(h) Authority. The signatories to this Agreement covenant and represent that each is fully authorized to enter into and to execute this Agreement on behalf of the above named party; the Company further represents that it has authority to bind the property upon which the Project is located.

(i) No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third party beneficiary.

(j) Electronic Transactions. The parties agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Signature Pages Follow]

IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first written above.

CITY OF GARDNER, KANSAS,
a Kansas municipal corporation

By: _____
Mayor

ATTEST:

City Clerk

GRATA DEVELOPMENT, LLC,
a Kansas limited liability company

By: _____
Travis Schram
President

EXHIBIT J-1

MAP AND DESCRIPTION OF PHASE 1 COMMON CID

The Phase 1 Common CID shall include the area legally described and depicted below. Subject to the Common CID Cap, and the terms of Article III of the Agreement, the CID Sales Tax levied within the Phase 1 Common CID shall be used to reimburse the following Common CID Improvement Costs expended by Developer in the following order of priority:

- First, to pay Eligible Expenses of the Commercial Improvements within the Phase 1 Common CID in an amount up to \$2,400,000;
- Second, to pay the cost of the Street Improvements;
- Third, to pay the cost of the Natural Gas Improvements; and
- Fourth, to pay the Eligible Expenses of the City Infrastructure Improvements or City street or traffic control project pursuant to Section 3.01 hereof.

[map and legal description of Phase 1 Common CID to be inserted]

EXHIBIT J-2

MAP AND DESCRIPTION OF PHASE 2 COMMON CID

The Phase 2 Common CID shall include the area legally described and depicted below. Subject to the Common CID Cap, and the terms of Article III of the Agreement, the CID Sales Tax levied within the Phase 2 Common CID shall be used to reimburse the following Common CID Improvement Costs expended by Developer in the following order of priority:

- First, to pay Eligible Expenses of the Commercial Improvements within the Phase 2 Common CID in an amount up to \$3,050,000;
- Second, to pay the cost of the Street Improvements;
- Third, to pay the cost of the Natural Gas Improvements; and
- Fourth, to pay the Eligible Expenses of the City Infrastructure Improvements or City street or traffic control project pursuant to Section 3.01 hereof.

[map and legal description of Phase 2 Common CID to be inserted]

EXHIBIT J-3

MAP AND DESCRIPTION OF PHASE 3 COMMON CID

The Phase 3 Common CID shall include the area legally described and depicted below. Subject to the Common CID Cap, and the terms of Article III of the Agreement, the CID Sales Tax levied within the Phase 3 Common CID shall be used to reimburse the following Common CID Improvement Costs expended by Developer in the following order of priority:

- First, to pay Eligible Expenses of the Commercial Improvements within the Phase 3 Common CID in an amount up to \$2,450,000;
- Second, to pay the cost of the Street Improvements;
- Third, to pay the cost of the Natural Gas Improvements; and
- Fourth, to pay the Eligible Expenses of the City Infrastructure Improvements or City street or traffic control project pursuant to Section 3.01 hereof.

[map and legal description of Phase 3 Common CID to be inserted]

EXHIBIT J-4

MAP AND DESCRIPTION OF PHASE 4 COMMON CID

The Phase 4 Common CID shall include the area legally described and depicted below. Subject to the Common CID Cap, and the terms of Article III of the Agreement, the CID Sales Tax levied within the Phase 4 Common CID shall be used to reimburse the following Common CID Improvement Costs expended by Developer in the following order of priority:

- First, to pay Eligible Expenses of the Commercial Improvements within the Phase 4 Common CID in an amount up to \$2,850,000;
- Second, to pay the cost of the Street Improvements;
- Third, to pay the cost of the Natural Gas Improvements;
- Fourth, to pay the Eligible Expenses of the City Infrastructure Improvements or City street or traffic control project pursuant to Section 3.01 hereof.

[map and legal description of Phase 4 Common CID to be inserted]

EXHIBIT K

EXAMPLE CONCEPT PLAN FOR PHASE OF COMMON CID

The CID Petitions submitted for each phase of the Common CID shall include a concept plan detailing the layout and proposed building types the Developer anticipates will be included in each such phase in substantially the form reflected below; provided, however, that the City and the Developer acknowledge and agree that the build out of each such phase shall be subject in all respects to market conditions.



SCHEDULE 3.04

COMMON CID CAP CALCULATION

The Common CID Cap in the amount not to exceed \$17,200,000 has been calculated as:

- a) the Developer's total estimated costs of approximately \$10,455,323 to complete the Street Improvements and Natural Gas Improvements;
- b) less deductions for the Excise Tax credit pursuant to Section 2.06 hereof;
- c) plus interest on the net amount outstanding at the end of each calendar year based on (a) and (b) above, and based on projected revenues from CID Sales Taxes in the Common CID, at the annual rate of 8.5%.

The Common CID Cap shall not be increased or reduced in the event that the actual amounts and timing of revenues, expenditures, or Excise Tax credits differ from the estimates, projections, and assumptions underlying the calculation of the Common CID Cap set forth above. Further, notwithstanding the use of an interest component to calculate the Common CID Cap as set forth above, no interest shall be payable on Eligible Expenses reimbursed from CID Sales Tax revenues under this Agreement.

SCHEDULE 4.01

IRB ORIGINATION FEES

- City's standard origination fee for IRBs is 1.0% of par.
- For IRBs issued for Multifamily Residential Improvements under this Agreement, City's origination fee shall be:
 - 1.0% of par for first \$15,000,000 in principal;
 - and 0.5% of par in excess of first \$15,000,000.

COUNCIL ACTION FORM

NEW BUSINESS ITEM NO. 2

MEETING DATE: FEBRUARY 21, 2022

STAFF CONTACT: GONZ GARCIA, UTILITIES DIRECTOR

Agenda Item: Consider authorizing the execution of a contract for Substation 4 site location, land acquisition, and preliminary design

Strategic Priority: Infrastructure and Asset Management

Department: Utilities – Electric Division

Staff Recommendation:

Staff recommends authorizing the City Administrator to execute a contract with Olsson, Inc. for Substation 4 site location, land acquisition, and preliminary design in the amount of \$130,970.

Background/Description of Item:

In 2006, Meers Engineering performed an Electric Master Plan that included a new substation south of I-35. Due to a series of annexations in recent years, the current city limits have been extended to 199th Street. To accommodate the growth of this area, a new substation will be needed.

Staff solicited a Request For Qualifications to determine which company is the most qualified to execute a site selection, land acquisition, and preliminary design of a new substation south of I-35. A selection committee was formed to review the qualifications. The committee members were:

- Ric Gere, Matt Ponzer, Utilities Staff Engineer, Committee Chair
- Bob Case, Chief Planner
- Alan Abramovitz, Human Resources Manager
- Matt Ponzer, Electric Generation Manager

Members of the selection committee independently reviewed the qualifications and provided a score for each contractor. The overall score sheet is included below:

	<i>Finley Engineering</i>	<i>Aquawolf</i>	<i>HDR</i>	<i>Olsson</i>	<i>Sargent & Lundy</i>
<i>Evaluation Criteria</i>	<i>Score</i>	<i>Score</i>	<i>Score</i>	<i>Score</i>	<i>Score</i>
A. Adherence to proposal outline	8.00	7.50	9.00	10.00	8.00
B. Understanding and Approach	22.25	22.50	28.00	29.25	24.50
C. Relevant Experience	16.00	15.25	19.50	18.75	17.25
D. Staff and Availability	13.75	12.75	14.00	14.75	13.75
E. Project Scheduling	7.50	6.00	8.00	9.25	8.25
F. Public Involvement Experience	9.75	9.25	12.75	12.50	10.25
Total Score	77.25	73.25	91.25	94.50	82.00

The committee agreed that Olsson, Inc. is well qualified and has a good project understanding and relevant experience that will benefit the city in the overall project execution.

The project will be executed in two phases.

Phase 1: Site Location

- Environmental Permitting Review
- Public Outreach
- Land Acquisition
- Substation Siting Report

Phase 2: Preliminary Design

- ALTA Survey
- Survey Descriptions and Exhibits
- Geotechnical Exploration
- Geotechnical Report
- Substation Engineering
- Transmission Engineering
- Civil Engineering
- Opinion of Probable Cost (OPC)

Financial Impact:

Funds are available in the Electric Fund, CIP Project No. EL2204.

Attachments:

- Olsson Agreement and Proposal
- 2021 City Limits Map

Suggested Motion:

Authorize the City Administrator to execute a contract with Olsson, Inc., in the amount of \$130,970 for the site location, land acquisition, and preliminary design of Substation 4

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement ["Agreement"], is made as of this ____ day of _____, 2022 by and between the City of Gardner, Kansas, [hereinafter "City"], and Olsson, Inc. [hereinafter referred to as "Consultant"].

RECITALS

WHEREAS, Consultant represents that it is a duly qualified professional engineering and project management firm, , experienced in the electrical design services for substations, transmissions lines and power distribution systems and related services; and

WHEREAS, in the judgment of the City of Gardner, it is necessary and desirable to employ the services of Consultant for said services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1.0 Term of Agreement.

The term of this Agreement shall be from February 21, 2022 to March 1, 2023 unless a different term is specified within the Scope of Services as described on Exhibit A or unless terminated earlier in accordance with the provisions of Article 2 below. In the event that the services rendered under this Agreement may extend beyond any one budget year, the continuation of this Agreement from year to year is contingent upon the approval of sufficient budgetary authority for the continuation of this Agreement by the City Council in the establishment of its annual budget.

2.0 Termination.

2.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, City shall have the right, in its sole discretion, to terminate this Agreement by giving 10 days written notice to Consultant.

2.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, City may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

2.3 Delivery of Work Product and Final Payment Upon Termination. In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to City all materials and work product subject to Section 13.1 (Ownership of Documents) and shall submit to City an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

- 2.4 Payment Upon Termination. Upon termination of this Agreement by City, the City shall pay Consultant the reasonable value of Services rendered by Consultant prior to termination; provided, however, City shall not in any manner be liable for lost profits that might have been made by Consultant had the Agreement not been terminated or had Consultant completed the Services required by this Agreement. In this regard, Consultant shall furnish to City such financial information as in the judgment of the City is necessary for City to determine the reasonable value of the Services rendered by Consultant. In determining the reasonable value of Services, appropriate consideration shall be given to the defective or deficient nature of the Services rendered. The foregoing is cumulative and does not affect any right or remedy that City may have in law or equity.
- 2.5 Authority to Terminate. The City Council has the authority to terminate this Agreement on behalf of the City. In addition, the City Administrator or Utilities Department Director, in consultation with the City Attorney, shall have the authority to terminate this Agreement on behalf of the City.
- 3.0 Scope of Services.
- 3.1 Consultant's Specified Services. The Scope of Services to be performed by Consultant under this Agreement is as described in Exhibit A to the Agreement, attached and incorporated by reference.
- 3.2 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. City has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by City shall not operate as a waiver or release of liability. If City determines that any of Consultant's work is not in accordance with such level of competency and standard of care, City, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with City to review the quality of work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 2; or (d) pursue any and all other remedies at law or in equity.
- 3.3 Assigned Personnel.
- 3.3.1 Consultant shall only assign competent personnel to perform work hereunder. In the event that at any time City, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from City.
- 3.3.2 With respect to this Agreement, the Consultant shall employ the following key personnel: **N/A**

- 3.3.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.
- 3.3.4 The Consultant shall designate Austin Jueneman (ajueneman@olsson.com) as Principal on the Project. As principal on this project, this person shall be the primary contact with the Project Representative and shall have authority to bind Consultant. So long as the individual named above remains actively employed or retained by Consultant, he/she shall perform the function of principal on the Project, unless otherwise agreed to in writing signed by both parties. The Consultant will supply a direct name, phone number and email and will notify the City if this contact information changes during the contract period.
- 3.3.5 City shall designate Gonz Garcia (913-856-0990) as the Project Representative to represent the City in coordinating this project with Consultant, with authority to transmit instructions and define policies and decisions of City. The written consent of the Department Director, and if applicable, City Administrator and/or City Council, shall be required to approve any increase in Project cost as defined in Exhibit B.

4.0 Time of Performance.

The services described herein shall be provided during the period described in this Agreement, or in accordance with the schedule, set forth in the Scope of Services.

5.0 Payment.

- 5.1 Payment shall be made by City only for services rendered and upon submission of a payment request upon completion and City approval of the work performed as defined in Exhibit B. In consideration for the full performance of the services set forth in Exhibit A, City agrees to pay Consultant pursuant to rates stated in Exhibit B to this Agreement, attached and incorporated by reference.
- 5.2 Consultant shall bill City monthly for all work performed. The bill submitted by Consultant shall itemize the work for which payment is requested. City agrees to pay Consultant within thirty (30) days of approval. Consultant agrees to submit herewith such financial information as shall be required by City to enable the City to properly report such payments as required by state or federal law.
- 5.3 All invoices should be sent to Robert Davis.
- 5.4 Right to Withhold Payment. City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to Consultant, to protect City from loss because of:
- 1) Defective Work not remedied by Consultant nor, in the opinion of City, likely to be remedied by Consultant;
 - 2) Claims of third parties against City or City's property;
 - 3) Failure by Consultant to pay Subcontractors or others in a prompt and proper fashion;
 - 4) Evidence that the balance of the Work cannot be completed in accordance with this Agreement for the unpaid balance of the Contract Price;

- 5) Evidence that the Work will not be completed in the Contract Time required for substantial or final completion;
 - 6) Persistent failure to carry out the Work in accordance with this Agreement;
 - 7) Damage to City or a third party to whom City is, or may be, liable; or
 - 8) Conditions unfavorable for the prosecution of Work, or because of conditions which, in the opinion of the Engineer, warrant such action.
- 5.5 City agrees to pay Consultant an amount not to exceed the sum of \$130,970.00 for performing services detailed in Exhibit A. This not to exceed amount may be increased for additional services as requested by the City and upon execution of a mutually acceptable amendment or change order signed by authorized representatives of City and Consultant.
- 5.6 If a portion of Consultant's statement is disputed by City, the undisputed portion shall be paid by City by the due date. City shall advise Consultant in writing of the basis for any disputed portion of any statement.
- 5.7 See Exhibit B for Schedule of Hourly Billing Rates. These rates are effective for services rendered through the term of this Agreement and are subject to revision thereafter, with no increase in Agreement amount. These rates are applicable to any additional service beyond the scope of services specified in Exhibit A which have been agreed to by the parties through a properly written and executed change order.

6.0 Cash Basis and Budget Laws.

The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws, or if mill levy funds generated are less than anticipated.

7.0 Indemnification.

To the fullest extent permitted by law, with respect to the performance of its obligations in this Contract or implied by law, and whether performed by Consultant or any permitted subcontractors hired by Consultant, the Consultant agrees to indemnify and hold harmless the City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent or intentional acts, errors, or omissions of the Consultant or its subcontractors. Consultant shall also pay for City's reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim.

8.0 Insurance.

- 8.1 The Consultant shall procure and maintain, at its sole expense, throughout the duration of this Agreement, insurance of such types (on an occurrence basis unless otherwise agreed to) and in at least such amounts as required herein (and not less than as required in any bid documents or other contract documents), from an insurance company licensed to do business in the State of Kansas, the following

insurance coverages as may be necessary to protect the Consultant and the City and agents of the City against all hazards or risks of loss as hereinafter specified:

- ☐ Workers' Compensation and Employer's Liability - Demonstrate compliance with K.S.A. 44-532(b) including maintenance of insurance providing the statutory limits under the Kansas Workers Compensation Act; the Consultant shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include an "all states" endorsement.
- ☐ Commercial General Liability for bodily injury and property damage liability claims arising from the injuries to members of the public or damage to property of others arising out of any act or omission of the Consultant or its agents, employees or Subcontractors with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The property damage liability coverage shall contain no exclusion relative to blasting, explosion, and collapse of building or damage to underground property and/or facilities.;
- ☐ Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles.
- ☐ Professional Liability - The Consultant shall maintain Professional Liability insurance in an amount not less than \$500,000, and shall provide the City with certification thereof.

8.2 The City shall be named as additional insured on such policies, except Workers' Compensation and Professional Liability. Satisfactory certificates of insurance shall be filed with the City prior to starting any work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.

8.3 Industry Ratings - The City will only accept coverage from an insurance carrier who offers proof that it:

- 1) Is licensed to do business in the State of Kansas;
- 2) Carries a Best's policyholder rating of A or better;

AND

- 3) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Consultant.

9.0 Conflict of Interest.

Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder, including under 31 U.S.C.S. Section 1352. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed.

10.0 Nondiscrimination.

Consultant must comply with the Kansas Act Against Discrimination and if applicable, execute a Certificate of Nondiscrimination and Affirmative Action as provided in K.S.A. §44-1030. The Consultant further agrees that the Consultant shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans with Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

11.0 Facilities and Equipment.

Consultant shall furnish at its own cost and expense all labor, tools, equipment, materials, transportation, and any other accessories, services and facilities required to complete the Project as designated, described in accordance with this Agreement, including any attached exhibits and any addendums to this Agreement. The City expressly denies responsibility for or ownership of any item purchased until the same is delivered to and accepted by the City.

12.0 Accessibility.

Consultant will comply with the Rehabilitation Act of 1973, as amended, Section 504, which prohibits discrimination against handicapped persons in employment services, participation and access to all programs receiving federal financial assistance. Consultant shall also comply with applicable requirements with the Americans with Disabilities Act (ADA), as amended, which is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying equal treatment by state and local governments and their agencies in employment practices and accessibility in public services and programs.

13.0 Records, Ownership and Inspection.

13.1 Ownership of Documents.

All documents prepared by Consultant in the performance of this Agreement, although instruments of professional service, are and shall be the property of City, whether the project for which they are made is executed or not. Any reuse of documents prepared by Contractor/Consultant by the city on other projects not contemplated under this Agreement shall be at the City's sole risk, without liability to Contractor/Consultant.

13.2 Open Records.

In recognition of the City's obligations under the Kansas Open Records Act ("KORA"), Consultant acknowledges that this Agreement along with any reports and/or records

provided pursuant to this Agreement are public documents and are subject to disclosure under KORA.

13.3 Maintenance of Records.

Except as otherwise authorized by the City, Consultant shall retain such documentation for a period of three (3) years after receipt of final expenditure report under this contract, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond this three (3) year period.

14.0 Independent Contractor.

It is the express intent of the parties that this Contract shall not create an employer-employee relationship. Employees of the Consultant shall not be deemed to be employees of the City and employees of the City shall not be deemed to be employees of the Contractor. The Contractor and the City shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the City's employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining worker's compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employee's compensation.

15.0 Compliance with Laws.

15.1 The Consultant shall observe and comply with all applicable federal, state, and local laws, regulations, standards, ordinances or codes and shall be in compliance with all applicable licensure and permitting requirements at all times.

15.2 Pursuant to K.S.A. 16-113, if the Consultant does not have a resident agent in the State of Kansas, it shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court of Johnson County, Kansas. These forms may be obtained at the Office of the Clerk of the District Court. Consultant shall be responsible for the filing fee. This certificate is pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Consultant for the awarding of the Contract.

16.0 Assignment.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented. The subcontracting, assignment, delegation or transfer of the Services shall in no way relieve the Consultant of its primary responsibility for the quality and performance of such Services.

17.0 Confidentiality.

All reports and documents prepared by Consultant in connection with the performance of this Agreement are confidential until released by City to the public. Consultant shall not

make any such documents or information available to any individual or organization not employed by Consultant or City without the written consent of City before any such release.

18.0 Notices.

All notices hereunder shall be given in writing and sent as follows:

To City:

Gonz Garcia - Utilities Director
City of Gardner
1150 E Santa Fe Street
Gardner, KS 66030

To Consultant:

Austin Jueneman - Associate Engineer
Olsson
7301 W 133rd St. #200
Overland Park, KS 66213

19.0 Amendments.

19.1 This document represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, and agreements, either written or oral.

19.2 This document may be amended only by written instrument, signed by both City and Consultant.

20.0 No Third Party Beneficiaries.

City and Consultant specifically agree that this Agreement is not intended to create any third party beneficiary relationship nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement; the duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

21.0 Force Majeure.

City shall not be responsible for any delay or failure of performance resulting from fire, flood, other acts of God, vandalism, strike, labor dispute of a third party, domestic or international unrest, delay in receipt of supplies, energy shortage or failure, or any other cause beyond its reasonable control.

22.0 Titles.

The titles in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

23.0 Negotiations.

City and Consultant agree that disputes relative to the project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Consultant shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.

24.0 Costs and Attorney Fees.

If on account of a continued default or breach by either party of such party's obligations under the terms of this agreement after any notice and opportunity to cure as may be required hereunder, it shall be necessary for the other party to employ one or more attorneys to enforce or defend any of such other party's rights or remedies hereunder, then, in such event, any reasonable amounts incurred by such other party, including but not limited to attorneys' fees, experts' fees and all costs, shall be paid by the breaching or defaulting party.

25.0 Severability.

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

26.0 Authority to Enter into Agreement.

Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

27.0 Incorporation of Appendices.

Exhibit A - Scope of Services and Exhibit B - Fees are attached hereto and made a part hereof as if fully set out herein.

28.0 Entire Agreement.

This Agreement represents the entire agreement between the Parties hereto and any provision not contained herein shall not be binding upon either party, nor have any force or effect.

29.0 Governing Law and Venue.

This Agreement shall be governed by the laws of the State of Kansas and, in the event of litigation, the sole and exclusive venue shall be within the District Court of Johnson County, Kansas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this ____ day of _____, 2022.

CITY OF GARDNER, KANSAS

CONSULTANT

(Mayor/City Administrator)



Rustin Hartman, Vice President



Austin Jueneman, Associate Engineer

ATTEST:

City Clerk

APPROVED AS TO FORM:

Ryan Denk, City Attorney

EXHIBIT A – SCOPE OF SERVICES

This exhibit is hereby attached to and made a part of the Agreement for Professional Services dated _____, 2022, between City of Gardner (“Client”) and Olsson, Inc. (“Olsson”) providing for professional services. Olsson’s Scope of Services for the Agreement is indicated below.

PROJECT DESCRIPTION AND LOCATION

Project will be located at: Gardner, KS

Project Description: Siting, land acquisition, and preliminary design for Substation No. 4.

SCOPE OF SERVICES

Olsson shall provide the following services (Scope of Services) to Client for the Project:

PHASE 1: SITE LOCATION

Phase 100 – Site Location

Task 101 – Desktop Environmental Permitting Review

Olsson will complete a desktop review of the assessment property at the Substation #4 Growth Area to identify potential concerns or issues regarding wetlands & streams, threatened & endangered (T&E) species, bald eagles, and migratory birds, and will provide recommendations to the Client about ways to avoid any such potential concerns or issues, if possible.

- The wetland and stream assessments will consist of a desktop review of available site maps to determine the location of potential wetlands and streams on the properties.
 - U.S. Fish and Wildlife’s (USFWS) National Wetland Inventory maps,
 - U.S. Geological Survey’s (USGS) topographic maps,
 - USGS National Hydrography Dataset maps and
 - Environmental Systems Research Institute’s aerial imagery.
- The T&E species review will include a desktop review using the USFWS-approved online Information for Planning and Consultation (IPaC) and Kansas Department of Wildlife and Parks county list to analyze the property for the likely presence of any federally- or state-listed species. The National Land Cover Database (NLCD) will be used to characterize the land cover within the Substation #4 Growth Area and determine the likelihood of potential T&E species habitat.
- The migratory birds and bald and golden eagle desktop review will evaluate potential habitat present based on the NLCD and aerial imagery. Recommendations will be proved based on the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act.
- Desktop review will also include a search of the National Register of Historic Places and Kansas Historic Resources Inventory for potential conflicts in the review area.

Following the desktop review of environmental resources, Olsson will provide the client a report of potential environmental resources within the Substation #4 Growth Area and discuss potential permitting requirements.

Task Limitations

- This task does not include a Section 404 individual or nationwide permit.
- This task does not include a field assessment or habitat surveys.
- This task does not include agency coordination.

Task 102 – Public Outreach

Stakeholder outreach – Letters would be sent to up to three property owners (desired property/ies for location of substation and those directly adjacent) to explain the project and process and offer a one-on-one meeting with the project team; up to three one-on-one stakeholders' meetings would be held to share more detailed information about the proposed location, process, and anticipated timing. Meetings could be virtual or in person.

Information for City website – General information about the project, process, anticipated timing, projects plans, and visuals would be developed and posted to the City's website. The link would be included on all information (stakeholder outreach letters, Planning Commission submittal, etc.) about the project for the public to stay informed on the progress.

Task 103 – Land Acquisition

Olsson shall negotiate the acquisition of land to construct the new substation for the City of Gardner. Olsson shall provide a valuation analysis of the property to be acquired to determine the market value. Olsson shall work through a title company to obtain title reports to determine existing ownership and encumbrances for the proposed acquisition parcels.

Olsson shall coordinate with survey to finalize a plat and legal description and prepare the form of easement or warranty deed to be executed by the private owners.

Assumptions:

- Olsson assumes the acquisition can be negotiated without the use of condemnation. If a voluntary acquisition cannot be negotiated and condemnation is required then additional expenses will be incurred including appraisals and additional time and expense for Olsson.
- City shall provide Olsson with the form of agreement the City will use to acquire the property from the landowner including any letters of intent or option agreements.
 - If the city does not have a standard letter of intent, Olsson can provide one. However, Olsson cannot provide an option agreement.

Deliverables:

- Title reports
- Prepare conveyance instruments
- Negotiate location, form of conveyance deed and any other concerns that the private owners may want to address as part of this project

- Finalize and deliver to City of Gardner fully executed conveyance instruments for all the property in connection with the new substation
- Communicate with City of Gardner and its construction consultants any special provisions associated with construction.

Task 104 – Substation Siting Report

Olsson will prepare a report with three (3) alternatives for substation siting and transmission line routing to each of the three sites. The report will summarize the desktop reviews completed and provide recommendations for the preferred substation site, transmission line route, preliminary cost estimates, and a conceptual site plan. Siting criteria to be considered (but not limited to) include:

- Proximity to Transmission Line, Site Preparation Costs, Constructability, Environmental Impacts, Property and Easement Acquisition, Site Access, Every Interconnection Requirements, and Zoning Regulations.

Task 105 – Project Management and Meetings

Olsson will coordinate with design groups, review time sheets, prepare billings and invoices, and prepare weekly project status reports. These reports will be in email format and will include the previous week's progress and expected deliverables for the upcoming week.

Olsson will conduct one progress meeting with the Client to discuss the preferred selection for the substation site. Olsson will prepare and distribute minutes of the meetings. Olsson will present project details to the city Utility Advisory Commission (UAC), Planning Commission, and City Council (as needed) for the acquisition of the substation site, and zoning application. This includes the special use permit, preliminary plat, and final plat application processes.

NOTICE TO PROCEED FOR PHASE 2

No work or billings shall commence for Phase 2 of the Project until both Olsson and Client agree that Phase 1 of the project is substantially complete and this Notice to Proceed has been signed.

OLSSON, INC.

By _____
Austin Jueneman, Associate Engineer

City of Gardner

By _____
Signature

Print Name _____

Title _____

Dated _____

PHASE 2: PRELIMINARY DESIGN

Phase 200 - Site Survey, Investigation, and Preliminary Design

Task 201 – ALTA Survey

Olsson shall perform an ALTA Survey of approximately 5 to 6 acres of land for a proposed substation site. We will utilize the 2021 ALTA Standards and Optional Table A items 1, 2, 3, 4, 5, 6a, 7a, 8, 11a*one-call, not private, 13, 16, 17, 18, and 19 along with the Standard ALTA certification. Commitment and copies of Schedule B II documents to be provided by the Client or if ordered by Olsson, paid for by the client.

Olsson shall provide revisions requested by Client within 30 days of providing ALTA survey to Client for review. Additional Table A items requested and/or a new/ updated title commitment package supplied beyond the 30 days shall be considered as an addendum/ or additional services. All Raw data obtained, and field notes created during the process of making this survey will remain the property of Olsson.

Utility location and mapping is for horizontal location of above ground and underground utilities only. Utility depths other than Sewers will not be obtained or indicated on the survey. Survey of utilities will be based on tracing and marking by One Call utility locator. By signing this contract, the client understands and acknowledges that utility mapping is not exact and it is possible that not all utility lines will be located. Olsson is not responsible for mismarked or unmarked utilities.

Task 202 – Survey Descriptions and Exhibits

Olsson will prepare meets and bounds legal descriptions and exhibits for items such as drainage easements, common access areas, non-platted parcels etc. as required by the City, local utility companies or the Client. We have no way to anticipate how many easements if any will be required. Services for description and exhibits will be conducted at a LS of \$700 per easement request. We have included an allowance for up to 5 easements.

Task 203 – Geotechnical Exploration

Layout and location of the new substation has not been determined at this time. The substation will contain a control building, transformers, switchgear, power circuit breakers, transmission line structures and other accessory equipment. Shallow and pier type foundations are typically used to support these structure and equipment loads.

All boring locations must be readily accessible to the drilling equipment. Olsson will locate public utilities using the Kansas one-call system.

We anticipate that 6 to 8 soil borings will be needed at the new substation site. The soil borings will be advanced to the depths proposed, or to refusal, whichever is shallower. If auger refusal is encountered, the boring will be advanced an additional 10 feet or to a maximum depth of 40 feet using rock coring methods.

Soils will be sampled in general accordance with ASTM D1586 (split barrel samples) and ASTM D1587 (thin walled tube samples). Where applicable, rock quality designation (RQD) will be measured for rock core samples.

We will obtain groundwater levels in the test borings at the time of drilling and upon completion of the drilling operations.

Pressuremeter tests will be performed in each boring at depths of 5, 10 and 15 feet below the existing ground surface elevation.

One resistivity test will be performed at the substation site. Resistivity testing will be performed using the Wenner 4-pin method with a-spacings of 2.5, 5, 10, 15, and 20 feet. The test array will include two perpendicular spreads.

As soil conditions dictate, laboratory testing may include visual soil classification (ASTM D2488), unconfined compression tests (ASTM D2166), thin-walled tube density tests (ASTM D7263), moisture content tests (ASTM D2216), Atterberg limit tests (ASTM D4318), P200 wash sieve tests (ASTM D1140), rock unconfined compression, and soil chemistry testing (pH, sulfates, sulfides, redox potential, chlorides).

Task 204 – Geotechnical Report

Olsson will perform engineering analyses and provide conclusions and recommendations regarding the following:

1. Maximum allowable soil bearing pressures and estimates of maximum total and differential settlement for design of shallow foundations. Shallow foundation recommendations will include minimum footing sizes and the required frost depth or other minimum bearing depth. Remedial measures, such as over-excavation, surcharge, or ground improvement, will also be addressed, if needed.
2. Drilled pier design parameters, including skin friction, uplift, end bearing, and estimated settlement. Soil and rock parameters (including backfill materials) will be provided for use in the MFAD design program.
3. General earthwork recommendations, including lift thickness, moisture control, and compaction criteria for backfill and structural fill. Seismic soil site classification per ASCE 7 and IBC.
4. Anticipated groundwater concerns, along with recommendations for addressing these concerns during construction, if required.
5. Preparation of subgrade soils supporting concrete slabs-on-grade, including an estimate of the modulus of subgrade reaction based on laboratory test results.

Deliverable will be a concise, bound Geotechnical Report.

Task 205 – Substation Engineering

Olsson will lay out the substation site to conform to the recommendations in the 2007 Master Plan: A single 161/12.47-kV, 15/20/25-28 transformer is recommended for the substation with a future expansion to two transformers. The proposed design will be similar to Substation No. 3. Olsson will coordinate the substation design with Evergy to meet their requirements and ensure the site provides adequate area for their facilities.

30% Design shall include considerations for:

- Civil sitework
- Concrete and Foundations

- Ground Grid
- Fencing and Lighting
- Below Grade Conduit
- Steel Structures
- Major Electrical Equipment and Switchgear Enclosures
- One-Line and Three-Line Diagrams

Assumptions:

- Gardner will provide the design plans and specifications from Substation No. 3 for Olsson's use.

Deliverables:

- Preliminary site layout
- 30% physical and electrical drawings
- Equipment specifications

Task 206 – Transmission Engineering

Olsson will coordinate the transmission design with Evergy to meet the host Transmission Owner's design standards/specification requirements and ensure the site provides adequate area for their facilities. Evergy will be responsible for the design and construction of the transmission line interconnection.

Olsson will coordinate with KMEA to submit Gardner's "SPP Attachment AQ Delivery Point Addition Process" for the new substation. Gardner will be responsible for any study application fees.

Deliverables:

- Preliminary transmission routing for site alternatives.
- SPP Attachment AQ application

Task 207 – Civil Engineering

Olsson will prepare a conceptual site layout for the site civil components of the proposed substation including access roads, incorporation/reference of substation equipment layouts, transmission line feeds, and perimeter fencing.

Olsson will prepare a Preliminary grading plan for the proposed substation site. This task will include depicting limits of grading, proposed contours, key spot grades, and any preliminary drainage structures that may be required. Earthwork quantities are not included as part of this task.

Olsson will prepare preliminary drainage and detention plans for the proposed substation site. This task includes preparing preliminary sizing calculations for sizing of any proposed detention basins. If required, stormwater treatment facilities will be identified on a preliminary basis and incorporated into the plans. This task will also include overall drainage strategies for the site for compliance with local codes.

Task 208 – Opinion of Probable Cost (OPC)

Olsson will prepare a detailed OPC and estimated lead times of material procurement and construction work after site investigation is complete.

Task 209 – Project Management and Meetings

Olsson will coordinate with design groups, review time sheets, prepare billings and invoices, and prepare weekly project status reports. These reports will be in email format and will include the previous week's progress and expected deliverables for the upcoming week.

One review meeting will be held during the 30% design phase to discuss design documents. Olsson will prepare and distribute minutes of the meetings. Olsson will present project details to the city Utility Advisory Commission (UAC), Planning Commission, and City Council (as needed) for the acquisition of the substation site, and zoning application. This includes the special use permit, preliminary plat, and final plat application processes.

Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

SCHEDULE FOR OLSSON'S SERVICES

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: February 14, 2022

Anticipated Completion Date: August 1, 2022

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

ANTICIPATED PROJECT SCHEDULE

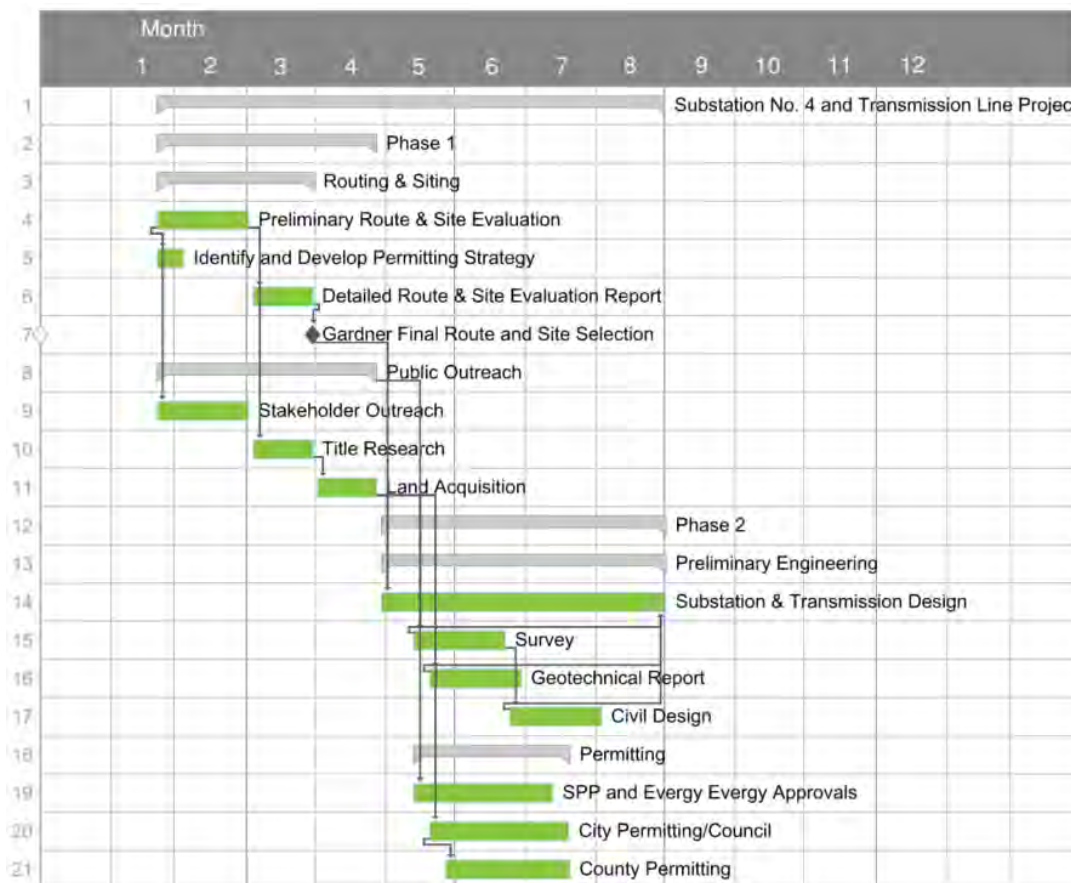


TABLE A

OPTIONAL SURVEY RESPONSIBILITIES AND SPECIFICATIONS

NOTE: Whether any of the nineteen (19) items of Table A are to be selected, and the exact wording of and fee for any selected item, may be negotiated between the surveyor and client. Any additional items negotiated between the surveyor and client must be identified as 20(a), 20(b), etc. Any additional items negotiated between the surveyor and client, and any negotiated changes to the wording of a Table A item, must be explained pursuant to Section 6.D.ii.(g). Notwithstanding Table A Items 5 and 11, if an engineering design survey is desired as part of an ALTA/NSPS Land Title Survey, such services should be negotiated under Table A, Item 20.

If checked, the following optional items are to be included in the ALTA/NSPS LAND TITLE SURVEY, except as otherwise qualified (see note above):

1. X Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the surveyed property, unless already marked or referenced by existing monuments or witnesses in close proximity to the corner.
2. X Address(es) of the surveyed property if disclosed in documents provided to or obtained by the surveyor, or observed while conducting the fieldwork.
3. X Flood zone classification (with proper annotation based on federal Flood Insurance Rate Maps or the state or local equivalent) depicted by scaled map location and graphic plotting only.
4. X Gross land area (and other areas if specified by the client).
5. X Vertical relief with the source of information (e.g., ground survey, aerial map), contour interval, datum, with originating benchmark, when appropriate.
6. X (a) If the current zoning classification, setback requirements, the height and floor space area restrictions, and parking requirements specific to the surveyed property are set forth in a zoning report or letter provided to the surveyor by the client or the client's designated representative, list the above items on the plat or map and identify the date and source of the report or letter.

 _____ (b) If the zoning setback requirements specific to the surveyed property are set forth in a zoning report or letter provided to the surveyor by the client or the client's designated representative, and if those requirements do not require an interpretation by the surveyor, graphically depict those requirements on the plat or map and identify the date and source of the report or letter.
7. X (a) Exterior dimensions of all buildings at ground level.
 (b) Square footage of:
 _____ (1) exterior footprint of all buildings at ground level.
 _____ (2) other areas as specified by the client.
 _____ (c) Measured height of all buildings above grade at a location specified by the client. If no location is specified, the point of measurement shall be identified.
8. X Substantial features observed in the process of conducting the fieldwork (in addition to the improvements and features required pursuant to Section 5 above) (e.g., parking lots, billboards, signs, swimming pools, landscaped areas, substantial areas of refuse).
9. _____ Number and type (e.g., disabled, motorcycle, regular and other marked specialized types) of clearly identifiable parking spaces on surface parking areas, lots and in parking structures.

Striping of clearly identifiable parking spaces on surface parking areas and lots.

10. _____ *As designated by the client, a determination of the relationship and location of certain division or party walls with respect to adjoining properties.*

11. *Evidence of underground utilities existing on or serving the surveyed property (in addition to the observed evidence of utilities required pursuant to Section 5.E.iv.) as determined by:*

 X *(a) plans and/or reports provided by client (with reference as to the sources of information)*

_____ *(b) markings coordinated by the surveyor pursuant to a private utility locate request*

Note to the client, insurer, and lender - With regard to Table A, item 11, information from the sources checked above will be combined with observed evidence of utilities pursuant to Section 5.E.iv. to develop a view of the underground utilities. However, lacking excavation, the exact location of underground features cannot be accurately, completely, and reliably depicted. In addition, in some jurisdictions, 811 or other similar utility locate requests from surveyors may be ignored or result in an incomplete response, in which case the surveyor shall note on the plat or map how this affected the surveyor's assessment of the location of the utilities. Where additional or more detailed information is required, the client is advised that excavation may be necessary.

12. _____ *As specified by the client, Governmental Agency survey-related requirements (e.g., HUD surveys, surveys for leases on Bureau of Land Management managed lands). The relevant survey requirements are to be provided by the client or client's designated representative.*

13. X *Names of adjoining owners according to current tax records. If more than one owner, identify the first owner's name listed in the tax records followed by "et al."*

14. _____ *As specified by the client, distance to the nearest intersecting street.*

15. _____ *Rectified orthophotography, photogrammetric mapping, remote sensing, airborne/mobile laser scanning and other similar products, tools or technologies as the basis for showing the location of certain features (excluding boundaries) where ground measurements are not otherwise necessary to locate those features to an appropriate and acceptable accuracy relative to a nearby boundary. The surveyor must (a) discuss the ramifications of such methodologies (e.g., the potential precision and completeness of the data gathered thereby) with the insurer, lender, and client prior to the performance of the survey, and (b) place a note on the face of the survey explaining the source, date, precision, and other relevant qualifications of any such data.*

16. X *Evidence of recent earth moving work, building construction, or building additions observed in the process of conducting the fieldwork.*

17. X *Proposed changes in street right of way lines, if such information is made available to the surveyor by the controlling jurisdiction. Evidence of recent street or sidewalk construction or repairs observed in the process of conducting the fieldwork.*

18. X *Pursuant to Sections 5 and 6 (and applicable selected Table A items, excluding Table A item 1), include as part of the survey any plottable offsite (i.e., appurtenant) easements disclosed in documents provided to or obtained by the surveyor.*

19. X *Professional liability insurance policy obtained by the surveyor in the minimum amount of \$_____ to be in effect throughout the contract term. Certificate of insurance to be furnished upon request, but this item shall not be addressed on the face of the plat or map.*

20. _____

Adopted by the Board of Governors, American Land Title Association, on October 1, 2020.

*American Land Title Association, 1800 M St., N.W., Suite 300S, Washington, D.C. 20036-5828.
www.alta.org*

Adopted by the Board of Directors, National Society of Professional Surveyors, on October 30, 2020.

*National Society of Professional Surveyors, Inc., 5119 Pegasus Court, Suite Q, Frederick, MD 21704.
<http://www.nsps.us.com/>*



EXHIBIT B - FEES

COMPENSATION

Client shall pay to Olsson for the performance of the Scope of Services, the actual time of personnel performing such services in accordance with the Labor Billing Rate Schedule(s), and all actual reimbursable expenses in accordance with the Reimbursable Expense Schedule attached to this Agreement. Olsson shall submit invoices on a monthly basis, and payment is due within 30 calendar days of invoice date.

Olsson's Scope of Services will be provided on a time-and-expense basis not to exceed \$ 130,970.00.

FEE BREAKDOWN

Task		Cost	Fee Type
Phase 1	Project Management and Meetings	\$ 4,080.00	TMNTE
	Environmental Permitting Review	\$ 5,500.00	TMNTE
	Public Outreach	\$ 2,000.00	TMNTE
	Land Acquisition	\$ 9,000.00	TMNTE
	Substation Siting Report	\$ 5,420.00	TMNTE
	Phase 1 Subtotal	\$ 26,000.00	
Phase 2	Project Management and Meetings	\$ 6,000.00	TMNTE
	ALTA Survey	\$ 6,900.00	LS
	Survey Descriptions and Exhibits	\$ 3,500.00	LS
	Geotechnical Exploration	\$ 16,950.00	LS
	Geotechnical Report	\$ 10,460.00	LS
	Substation Engineering	\$ 30,600.00	TMNTE
	Transmission Engineering	\$ 2,580.00	TMNTE
	Civil Engineering	\$ 24,860.00	TMNTE
	Opinion of Probable Cost (OPC)	\$ 3,120.00	TMNTE
	Phase 2 Subtotal	\$104,970.00	TMNTE
Total		\$130,970.00	

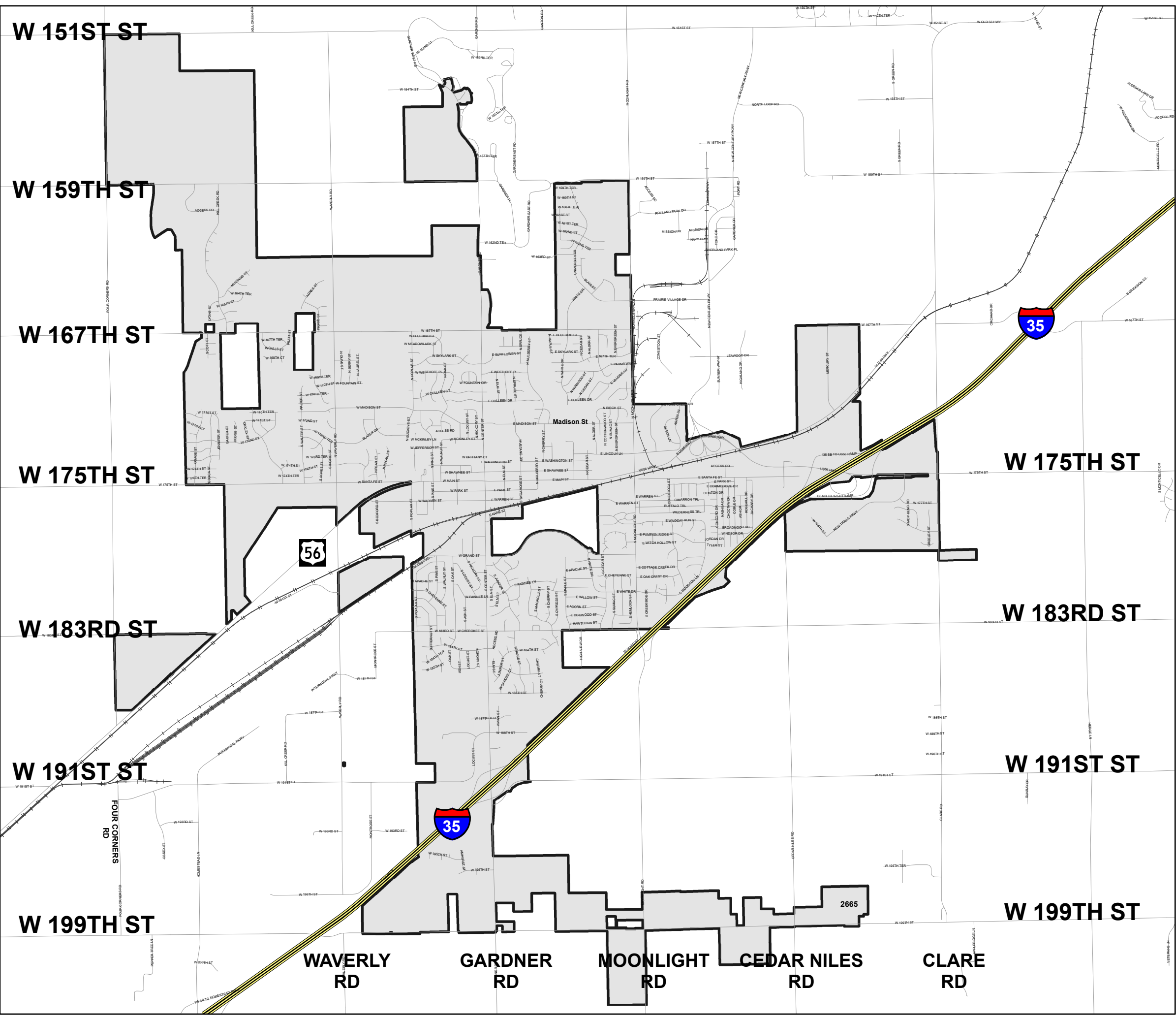
*Includes lump sum costs of drilling and soil tests.

HOURLY BILLING RATES

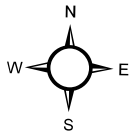
Team Member	Hourly Rate
Team Leader	\$250
Technical Leader	\$300
Senior Engineer	\$240
Project Engineer	\$200
Associate Engineer	\$150
Assistant Engineer	\$120
UAV/Drone Operator	\$132
Senior Surveyor	\$150
Design Technician	\$100
Senior Technician	\$120
Public Involvement	\$90

**All reimbursable expenses will be billed at cost with no mark-up.*

City of Gardner 2021 City Limits



 City of Gardner



Disclaimer and Terms of User are being supplied to you with an approximation to represent our product and its potential. Any claims made of actual results can be verified upon request. Sources of Data; Johnson County AIMS, City of Gardner, Created 1/12/2021

COUNCIL ACTION FORM

NEW BUSINESS ITEM No. 3

MEETING DATE: FEBRUARY 21, 2022

STAFF CONTACT: JIM PRUETTING, CITY ADMINISTRATOR

Agenda Item: Consider accepting a voluntary annexation with landowner consent

Strategic Priority: Promote Economic Development

Department: Community Development

Staff Recommendation:

Staff recommends adopting an ordinance for a voluntary annexation of a parcel of land as described in the ordinance, annexing property owned by Jean Louise Gilmore, Arnold E. Johnson, and Lynn A. Johnson.

Background/Description of Item:

A request to voluntarily annex the tract was received by the City, signed by the owners of record. The property adjoins land already in the City of Gardner and therefore can be annexed upon receipt of a voluntary annexation request from the property owners.

The attached Voluntary Consent Annexation Agreement outlines the terms agreed upon by the City and the property owner as conditions for this consent annexation. The terms are consistent with the direction of the governing body regarding annexation of rural properties in the City's planning and growth area. Consent annexations are not subject to resolution, notice, public hearing, and extension of services plan requirements that may apply to other annexations.

Financial Impact:

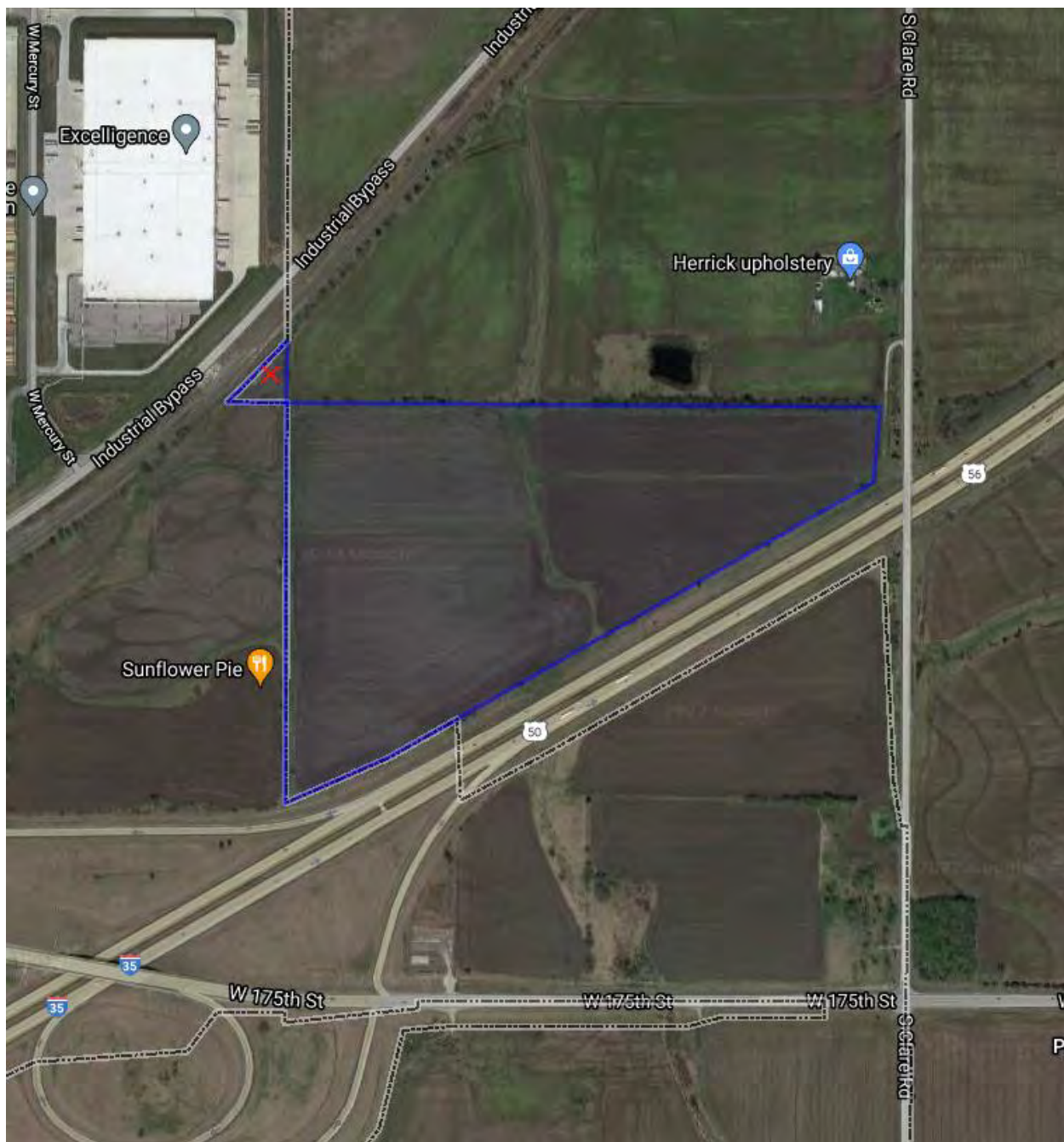
The city will experience normal growth in its utilities structure.

Attachments included:

- Map of Tract
- Ordinance No. 2726
- Consent Annexation Request

Suggested Motion:

Accept the Voluntary Consent Annexation request of the Jean Louise Gilmore, Arnold E. Johnson, and Lynn A. Johnson property and adopt Ordinance No. 2726, an ordinance annexing land to the City of Gardner, Kansas



ORDINANCE NO. 2726

AN ORDINANCE ANNEXING LAND TO THE CITY OF GARDNER, KANSAS.

WHEREAS, the following described land is located in Johnson County, Kansas;

WHEREAS, a written petition and/or consent for annexation of the following described land, signed by all of the owners thereof, have been filed with the City of Gardner, Kansas pursuant to K.S.A. 12-520(a)(7), as amended; and

WHEREAS, the governing body of the City of Gardner, Kansas, finds it advisable to annex such land.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

Section 1. That the following described land is hereby annexed and made a part of the City of Gardner, Kansas:

Legal Description:

All that part of the Northwest 1/4 of said Section 20, Township 14, Range 23, lying South of the right of way of said Atchison, Topeka and Santa Fe Railroad Company, subject, however, to the rights of the Kansas State Highway Commission for highway purposes, all in Johnson County, Kansas, Also.

The Southeast 1/4 of Section 20, Township 14, Range 23, in Johnson County, Kansas, subject, however, to the rights of the Kansas State Highway Commission for highway purposes, Except the following described tract: Beginning at a point on the South line of Section 20, and 763 feet East of the Southwest Corner of the Southeast 1/4 of Section 20, Township 14, Range 23; thence North and parallel to the North-South Center Line of said Section 20, 862.58 feet to the South right-of-way line of Interstate 35; thence South 60 degrees 02 minutes 40 seconds West along the said right-of-way line, 766.62 feet; thence South 33 degrees 30 minutes West to a point on the North-South Center line of said Section 20, 179.01 feet; thence South along said Center line, 192.85 feet, said point being 135.00 feet north of the Southwest Corner of the Southeast 1/4 of Section 20; thence

South 79 degrees 32 minutes 40 seconds East to a point 30 feet North and 580 feet East of the Southwest Corner of the Southeast 1/4 of Section 20, 589.79 feet; thence South to the Center line of a County Road, 30 feet; thence South 89 degrees 48 minutes East along the South line of Section 20, 183.00 feet to the point of beginning.

And Except,

All that part of the Southeast 1/4 of Section 20, Township 14, Range 23, in Johnson County, Kansas, lying South and East of Southerly right of way line of Interstate Highway No. I-35, except that part thereof lying West of a line drawn from a point on the South line of said 1/4 Section and 763 feet East of the Southwest corner thereof and running North parallel to the North-South center line of said Section, a distance of 862.58 feet to a point on the Southerly right of way of Interstate Highway No. 1-35 and also described as: All that part of the Southeast Quarter of Section 20, Township 14, Range 23, Johnson County, Kansas, more particularly described as follows: Beginning at the Southeast Corner of the Southeast Quarter of said Section 20; thence South 89 degrees 29 minutes 35 seconds West, along the South line Of the Southeast Quarter of said Section 20, a distance of 1946.80 feet, to a point 763.00 feet East, of the Southwest Corner of the Southeast Quarter of said Section 20; thence North 0 degrees 10 minutes 59 seconds West, parallel to the West line of the Southeast Quarter of said Section 20, a distance of 859.41 feet to a point on the Southerly right-of-way line of Interstate Highway No. 35, as now established; thence North 59 degrees 46 minutes 30 seconds East, along said Highway right-of-way line, a distance of 1975.76 feet; thence on a curve to the left having a radius of 11,609.16 feet and a length of 147.74 feet to a point 28.00 feet Southwesterly from the East line of the Southeast Quarter of said Section 20; thence South 3 degrees 06 minutes 03 seconds East, along said Highway right-of-way line, a distance of 968.54 feet to a point 60.00 feet West of the East line of the Southeast Quarter of said Section 20; thence South 10 degrees 36 minutes 10 seconds East, along said Highway right- of-way line, a distance of 193.20 feet to a point 25.00 feet West of the East line of the Southeast Quarter of said Section 20; thence North 89 degrees 50 minutes 04 seconds East, a distance of 25.00 feet to a point on the East line of the Southeast Quarter of said Section 20; thence South 0 degrees 09 minutes 56 seconds East, along the East line of the Southeast Quarter of said Section 20, a distance of 755.00 feet to the Point of Beginning; except any part in road right-of-way. AND EXCEPT ANY PART IN ROAD AND HIGHWAY.

Book/Page: 1654 59 (1st part described on deed in "Southwest Section" is already annexed into Gardner).

{Remainder of page left intentionally blank.}

Section 2. That this ordinance shall be effective from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Governing Body of the City of Gardner, Kansas this 21st day of February, 2022.

Todd Winters, Mayor

(SEAL)

ATTEST:

Sharon Rose, City Clerk

APPROVED AS TO FORM:

Ryan B. Denk, City Attorney

VOLUNTARY CONSENT ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made and entered into this 15th day of Feb, 2022, between the City of Gardner, Kansas, a municipal corporation (the City), and Jean Louise Gilmore, Arnold E. Johnson (Trustee of Arnold E. Johnson Trust), and Lynn A. Johnson (Property Owners).

RECITALS

- A. The Property Owner(s) are the owners of record of the following described real property ("Property") located in unincorporated areas of Johnson County, Kansas adjacent to or within a platted subdivision adjacent to the City of Gardner, Kansas.

Legal Description:

All that part of the Northwest 1/4 of said Section 20, Township 14, Range 23, lying South of the right of way of said Atchison, Topeka and Santa Fe Railroad Company, subject, however, to the rights of the Kansas State Highway Commission for highway purposes, all in Johnson County, Kansas, Also,

The Southeast 1/4 of Section 20, Township 14, Range 23, in Johnson County, Kansas, subject, however, to the rights of the Kansas State Highway Commission for highway purposes, Except the following described tract: Beginning at a point on the South line of Section 20, and 763 feet East of the Southwest Corner of the Southeast 1/4 of Section 20, Township 14, Range 23; thence North and parallel to the North-South Center Line of said Section 20, 862.58 feet to the South right-of-way line of Interstate 35; thence South 60 degrees 02 minutes 40 seconds West along the said right-of-way line, 766.62 feet; thence South 33 degrees 30 minutes West to a point on the North-South Center line of said Section 20, 179.01 feet; thence South along said Center line, 192.85 feet, said point being 135.00 feet north of the Southwest Corner of the Southeast 1/4 of Section 20; thence South 79 degrees 32 minutes 40 seconds East to a point 30 feet North and 580 feet East of the Southwest Corner of the Southeast 1/4 of Section 20, 589.79 feet; thence South to the Center line of a County Road, 30 feet; thence South 89 degrees 48 minutes East along the South line of Section 20, 183.00 feet to the point of beginning.

And Except,

All that part of the Southeast 1/4 of Section 20, Township 14, Range 23, in Johnson County, Kansas, lying South and East of Southerly right of way line of Interstate Highway No. 1-35, except that part thereof lying West of a line drawn from a point on the South line of said 1/4 Section and 763 feet East of the Southwest corner thereof and running North parallel to the North-South center line of said Section, a distance of 862.58 feet to a point on the Southerly right of way of Interstate Highway No. 1-35 and also described as: All that part of the Southeast Quarter of Section 20, Township 14, Range 23, Johnson County, Kansas, more particularly described as follows: Beginning at the Southeast Corner of the Southeast Quarter of said Section 20; thence South 89 degrees 29 minutes 35 seconds West, along the South line Of the Southeast Quarter of said Section 20, a distance of 1946.80 feet, to a point 763.00 feet East, of the Southwest Corner of the Southeast Quarter of said Section 20; thence North 0 degrees 10 minutes 59 seconds West, parallel to the West line of the Southeast Quarter of said Section 20, a distance of 859.41 feet to a point on the Southerly right-of-way line of Interstate Highway No. 35, as now established; thence North 59 degrees 46 minutes 30 seconds East, along said Highway right-of-

way line, a distance of 1975.76 feet; thence on a curve to the left having a radius of 11,609.16 feet and a length of 147.74 feet to a point 28.00 feet Southwesterly from the East line of the Southeast Quarter of said Section 20; thence South 3 degrees 06 minutes 03 seconds East, along said Highway right-of-way line, a distance of 968.54 feet to a point 60.00 feet West of the East line of the Southeast Quarter of said Section 20; thence South 10 degrees 36 minutes 10 seconds East, along said Highway right-of-way line, a distance of 193.20 feet to a point 25.00 feet West of the East line of the Southeast Quarter of said Section 20; thence North 89 degrees 50 minutes 04 seconds East, a distance of 25.00 feet to a point on the East line of the Southeast Quarter of said Section 20; thence South 0 degrees 09 minutes 56 seconds East, along the East line of the Southeast Quarter of said Section 20, a distance of 755.00 feet to the Point of Beginning; except any part in road right-of-way. AND EXCEPT ANY PART IN ROAD AND HIGHWAY.

Book/Page: 1654 59 (1st part described on deed in "Southwest Section" is already annexed into Gardner).

- B. The Owner has evinced an intent that the Property be annexed by the City and has, to that effect, signed a Consent to Annexation, dated 15 Feb, 2022, and will be filed by the City with the Office of Register of deeds for Johnson County, Kansas. (A copy of the executed and filed Consent to Annexation is affixed hereto as Exhibit A).

The parties agree as follows:

1. **Consent to Annexation.** Property Owner(s) consents to annexation of the Property into the City of Gardner, Kansas. In the event of a default of any of the City's obligations under this Agreement, the Property Owner(s) sole recourse shall be to petition the City for de-annexation.
2. **Zoning.** The Property is currently zoned Rural (RUR) by the County. A copy of the County zoning regulations application to the RUR zoning district at the time of annexation are attached hereto as Exhibit B. Pursuant to Kansas law, following annexation, the Property shall retain its County zoning until such time that a rezoning of the property may be approved. Similarly, again pursuant to Kansas law, any legal, non-conforming uses existing on the Property immediately preceding annexation may continue until such time as any such use loses its legal, non-conforming use status under the laws of this State.
3. **Acceptance of Annexation.** The annexation will not become effective until after the City Council formally approves and adopts the necessary Annexation Ordinance as required by Kansas Statutes and said ordinance is published once in the official City newspaper.

Now, therefore, the undersigned does give full and complete consent to the City of Gardner to annex the above-described property in accordance with the laws of the state of Kansas at any time after the date of this agreement.

This agreement shall run with the land described and shall be binding upon the heirs, grantees successors and assigns of the undersigned.

ADOPTED BY THE CITY COUNCIL AND SIGNED BY THE MAYOR OF GARDNER, KANSAS ON THE _____
DAY OF _____, 2022.

CITY OF GARDNER, KANSAS

BY: _____
Todd Winters, Mayor

ATTEST:

Sharon Rose, City Clerk

Approved as to form:

Ryan Denk, City Attorney

In Witness thereof, the undersigned have caused this agreement to be executed on 15 day of
Feb, 2022.

Owner(s) of Record:

Jean Louise Gilmore
Jean Louise Gilmore

Arnold E. Johnson, Trustee of Arnold E. Johnson Trust

Lynn A. Johnson

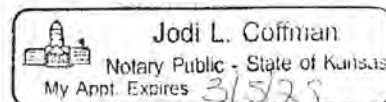
State of Kansas

County of Johnson

The foregoing instrument was acknowledged before me this 15 day of Feb,
~~2020~~ ²⁰²², by Jean Louise Gilmore

Jodi L. Coffman
Notary Public

Seal



ADOPTED BY THE CITY COUNCIL AND SIGNED BY THE MAYOR OF GARDNER, KANSAS ON THE _____
DAY OF _____, 2022.

CITY OF GARDNER, KANSAS

BY: _____
Todd Winters, Mayor

ATTEST:

Sharon Rose, City Clerk

Approved as to form:

Ryan Denk, City Attorney

In Witness thereof, the undersigned have caused this agreement to be executed on _____ day of
_____, 2022.

Owner(s) of Record:

Jean Louise Gilmore

Arnold E. Johnson, Trustee of Arnold E. Johnson Trust

Lynn A. Johnson

State of ~~Kansas~~ ^{NH}

County of ~~Johnson~~ ^{Cheshire}

The foregoing instrument was acknowledged before me this 15th day of February

2020 by Arnold E. Johnson

Notary Public

Seal

ASHLEY A. PATNODE
Notary Public - New Hampshire
My Commission Expires April 7, 2026

ADOPTED BY THE CITY COUNCIL AND SIGNED BY THE MAYOR OF GARDNER, KANSAS ON THE _____
DAY OF _____, 2022.

CITY OF GARDNER, KANSAS

BY: _____
Ford Winters, Mayor

ATTEST:

Sharon Rose, City Clerk

Approved as to form:

Ryan Denk, City Attorney

In Witness thereof, the undersigned have caused this agreement to be executed on _____ day of _____, 2022.

Owner(s) of Record:

Jean Louise Gilmore

Arnold E. Johnson, Trustee of Arnold E. Johnson Trust

Lynn A. Johnson
Lynn A. Johnson

State of Colorado County of Montezuma
Subscribed and sworn before me on 01/11/22
(Date)

(Notary Signature)

Exhibit A

CONSENT FOR ANNEXATION

(Adjoining property by request)

To: The Governing Body of the City of Gardner, Kansas.

The undersigned owners of record of the following described land hereby petition the Governing Body of the City of Gardner, Kansas to annex such land to the city. The land to be annexed is described as follows:

All that part of the Northwest 1/4 of said Section 20, Township 14, Range 23, lying South of the right of way of said Atchison, Topeka and Santa Fe Railroad Company, subject, however, to the rights of the Kansas State Highway Commission for highway purposes, all in Johnson County, Kansas, Also,

The Southeast 1/4 of Section 20, Township 14, Range 23, in Johnson County, Kansas, subject, however, to the rights of the Kansas State Highway Commission for highway purposes, Except the following described tract: Beginning at a point on the South line of Section 20, and 763 feet East of the Southwest Corner of the Southeast 1/4 of Section 20, Township 14, Range 23; thence North and parallel to the North-South Center Line of said Section 20, 862.58 feet to the South right-of-way line of Interstate 35; thence South 60 degrees 02 minutes 40 seconds West along the said right-of-way line, 766.62 feet; thence South 33 degrees 30 minutes West to a point on the North-South Center line of said Section 20, 179.01 feet; thence South along said Center line, 192.85 feet, said point being 135.00 feet north of the Southwest Corner of the Southeast 1/4 of Section 20; thence South 79 degrees 32 minutes 40 seconds East to a point 30 feet North and 580 feet East of the Southwest Corner of the Southeast 1/4 of Section 20, 589.79 feet; thence South to the Center line of a County Road, 30 feet; thence South 89 degrees 48 minutes East along the South line of Section 20, 183.00 feet to the point of beginning.

And Except,

All that part of the Southeast 1/4 of Section 20, Township 14, Range 23, in Johnson County, Kansas, lying South and East of Southerly right of way line of Interstate Highway No. I-35, except that part thereof lying West of a line drawn from a point on the South line of said 1/4 Section and 763 feet East of the Southwest corner thereof and running North parallel to the North-South center line of said Section, a distance of 862.58 feet to a point on the Southerly right of way of Interstate Highway No. 1-35 and also described as: All that part of the Southeast Quarter of Section 20, Township 14, Range 23, Johnson County, Kansas, more particularly described as follows: Beginning at the Southeast Corner of the Southeast Quarter of said Section 20; thence South 89 degrees 29 minutes 35 seconds West, along the South line Of the Southeast Quarter of said Section 20, a distance of 1946.80 feet, to a point 763.00 feet East, of the Southwest Corner of the Southeast Quarter of said Section 20; thence North 0 degrees 10 minutes 59 seconds West, parallel to the West line of the Southeast Quarter of said Section 20, a distance of 859.41 feet to a point on the Southerly right-of-way line of Interstate Highway No. 35, as now established; thence North 59 degrees 46 minutes 30 seconds East, along said Highway right-of-way line, a distance of 1975.76 feet; thence on a cure to the left having a radius of 11,609.16 feet and a length of 147.74 feet to a point 28.00 feet Southwesterly from the East line of the Southeast Quarter of said

Section 20; thence South 3 degrees 06 minutes 03 seconds East, along said Highway right-of-way line, a distance of 968.54 feet to a point 60.00 feet West of the East line of the Southeast Quarter of said Section 20; thence South 10 degrees 36 minutes 10 seconds East, along said Highway right-of-way line, a distance of 193.20 feet to a point 25.00 feet West of the East line of the Southeast Quarter of said Section 20; thence North 89 degrees 50 minutes 04 seconds East, a distance of 25.00 feet to a point on the East line of the Southeast Quarter of said Section 20; thence South 0 degrees 09 minutes 56 seconds East, along the East line of the Southeast Quarter of said Section 20, a distance of 755.00 feet to the Point of Beginning; except any part in road right-of-way. AND EXCEPT ANY PART IN ROAD AND HIGHWAY.

Such land lies upon or touches the city boundary line.

The undersigned further warrant and guarantee that they are the only owners of record of the land. Signed this 15th day of Feb, 2022.

Owner(s) of Record:

Jean Louise Gilmore
Jean Louise Gilmore

Arnold E. Johnson, Trustee of Arnold E. Johnson Trust

Lynn A. Johnson

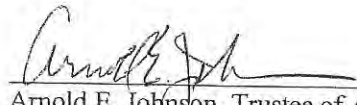
Section 20; thence South 3 degrees 06 minutes 03 seconds East, along said Highway right-of-way line, a distance of 968.54 feet to a point 60.00 feet West of the East line of the Southeast Quarter of said Section 20; thence South 10 degrees 36 minutes 10 seconds East, along said Highway right-of-way line, a distance of 193.20 feet to a point 25.00 feet West of the East line of the Southeast Quarter of said Section 20; thence North 89 degrees 50 minutes 04 seconds East, a distance of 25.00 feet to a point on the East line of the Southeast Quarter of said Section 20; thence South 0 degrees 09 minutes 56 seconds East, along the East line of the Southeast Quarter of said Section 20, a distance of 755.00 feet to the Point of Beginning; except any part in road right-of-way. AND EXCEPT ANY PART IN ROAD AND HIGHWAY.

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Jean Louise Gilmore



Arnold E. Johnson, Trustee of Arnold E. Johnson Trust

Lynn A. Johnson

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Such land lies upon or touches the city boundary line.

The undersigned further warrant and guarantee that they are the only owners of record of the land. Signed this 15 day of February, 2022.

Owner(s) of Record:

Jean Louise Gilmore

Arnold E. Johnson, Trustee of Arnold E. Johnson Trust

Joan A. Johnson
Lynn A. Johnson

**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
PROBATE SECTION**

In the Matter of the Estate of)	No. 19PR00933
)	Division No. 15
LYNN ARMSTRONG JOHNSON,)	
Deceased.)	Chapter 59 Proceeding

TITLE TO REAL ESTATE INVOLVED

DECREE OF DESCENT

On November 19, 2019, comes on for hearing the Petition for Determination of Descent filed by Joan A. Johnson. There are no appearances.

After examining the files, hearing the evidence, statements and arguments of counsel and being duly advised in the premises, the Court finds as follows:

1. Due diligence has been exercised in the search for names, ages, relationships, residences and address of heirs.
2. Notice of this hearing has been given as required by law and the order of this Court and proof thereof has been duly filed and is hereby approved.
3. The allegations of the petition are true.
4. The terms of the Servicemembers' Civil Relief Act of 2003, as amended, have been complied with as to any interested person or persons who are in the service of the United States or its allies.
5. Lynn Armstrong Johnson died in Denver, Denver County, Colorado on April 11, 2019; more than six months have expired since the date of death; at the time of death decedent was a resident of Centennial, Arapahoe County, Colorado, and a

Clerk of the District Court, Johnson County Kansas
11/19/19 09:45am NH

citizen of the United States.

6. No petition has been filed for the probate of the Will of the decedent nor has administration commenced in this state.

7. The names, ages, relationships, residences and addresses of the heirs of the decedent, so far as known or can with reasonable diligence be ascertained, are:

Joan A. Johnson	Adult	Spouse
2326 Crabtree Drive		
Centennial, CO 80121		

8. The decedent had no spouse, children, issue of deceased children, or other heirs who survived other than the persons above named.

9. At the time of his death, Decedent, **LYNN ARMSTRONG JOHNSON**, owned the following described real estate situated in Johnson County, Kansas:

**An undivided ONE-THIRD (1/3) interest in the real estate
Legally described in Exhibit "A" attached hereto and
incorporated herein by this reference,**

**which is commonly known as I-35 and Blair Road, Gardner,
KS 66030.**

10. There are no estate or inheritance taxes due.

11. The Kansas real estate described above and all of the personal property remaining in the hands of the petitioner after payment of fees, expenses and costs and subject to any lawful disposition previously made should be assigned and distributed as follows:

Joan A. Johnson	surviving spouse	100%
2326 Crabtree Drive		
Centennial, CO 80121		

IT IS THEREFORE BY THE COURT CONSIDERED, ORDERED, ADJUDGED
AND DECREED:

(A) The above findings are hereby made a part of the order and decree of this Court.

(B) The title to all interest of **Lynn Armstrong Johnson**, deceased, in and to the real estate above described and all other Kansas real estate and personal property owned by the decedent at death on April 11, 2019, descended from decedent to decedent's heirs at law pursuant to the laws of intestate succession in the following proportions:

Joan A. Johnson	100%
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and the title thereto is assigned to said heirs as of the date of death, subject to any lawful disposition heretofore made.

/s/ MICHAEL JOYCE
Dated: 11/19/19

DISTRICT COURT JUDGE

Submitted by:
s/Max Gordon
Max Gordon, Kansas Bar No. 13401
7199 West 98th Terrace, Suite 140
Overland Park, KS 66212
(913) 385-2600
Fax: (913) 385-2880
max@maxgordonlaw.com
Attorney for Petitioner

EXHIBIT "A"

All that part of the East 1/2 of the Southwest 1/4 of Section 20, Township 14, Range 23, lying South of the right of way of the Atchison, Topeka and Santa Fe Railway Company; and all that part of the Northwest 1/4 of said Section 20 lying South of the right of way of said Atchison, Topeka and Santa Fe Railroad Company, subject, however, to the rights of the Kansas State Highway Commission for highway purposes, all in Johnson County, Kansas, Also

The Southeast 1/4 of Section 20, Township 14, Range 23, in Johnson County, Kansas, subject, however, to the rights of the Kansas State Highway Commission for highway purposes, Except the following described tract: Beginning at a point on the South line of Section 20, and 763 feet East of the Southwest Corner of the Southeast 1/4 of Section 20, Township 14, Range 23; thence North and parallel to the North-South Center Line of said Section 20, 862.58 feet to the South right-of-way line of Interstate 35; thence South 60 degrees 02 minutes 40 seconds West along the said right-of-way line, 766.62 feet; thence South 33 degrees 30 minutes West to a point on the North-South Center line of said Section 20, 179.01 feet; thence South along said Center line, 192.85 feet, said point being 135.00 feet north of the Southwest Corner of the Southeast 1/4 of Section 20; thence South 79 degrees 32 minutes 40 seconds East to a point 30 feet North and 580 feet East of the Southwest Corner of the Southeast 1/4 of Section 20, 589.79 feet; thence South to the Center line of a County Road, 30 feet; thence South 89 degrees 48 minutes East along the South line of Section 20, 183.00 feet to the point of beginning.

And Except

All that part of the Southeast 1/4 of Section 20, Township 14, Range 23, in Johnson County, Kansas, lying South and East of Southerly right of way line of Interstate Highway No. I -35, except that part thereof lying West of a line drawn from a point on the South line of said 1/4 Section and 763 feet East of the Southwest corner thereof and running North parallel to the North-South center line of said Section, a distance of 862.58 feet to a point on the Southerly right of way of Interstate Highway No. I-35 and also described as: All that part of the Southeast

Quarter of Section 20, Township 14, Range 23, Johnson County, Kansas, more particularly described as follows: Beginning at the Southeast Corner of the Southeast Quarter of said Section 20; thence South 89 degrees 29 minutes 35 seconds West, along the South line Of the Southeast Quarter of said Section 20, a distance of 1946.80 feet, to a point 763.00 feet East, of the Southwest Corner of the Southeast Quarter of said Section 20; thence North 0 degrees 10 minutes 59 seconds West, parallel to the West line of the Southeast Quarter of said Section 20, a distance of 859.41 feet to a point on the Southerly right-of-way line of Interstate Highway No. 35, as now established; thence North 59 degrees 46 minutes 30 seconds East, along said Highway right-of-way line, a distance of 1975.76 feet; thence on a cure to the left having a radius of 11,609.16 feet and a length of 147.74 feet to a point 28.00 feet Southwesterly from the East line of the Southeast Quarter of said Section 20; thence South 3 degrees 06 minutes 03 seconds East, along said Highway right-of-way line, a distance of 968.54 feet to a point 60.00 feet West of the East line of the Southeast Quarter of said Section 20; thence South 10 degrees 36 minutes 10 seconds East, along said Highway right-of-way line, a distance of 193.20 feet to a point 25.00 feet West of the East line of the Southeast Quarter of said Section 20; thence North

89 degrees 50 minutes 04 seconds East, a distance of 25.00 feet to a point on the East line of the Southeast Quarter of said Section 20; thence South 0 degrees 09 minutes 56 seconds East, along the East line of the Southeast Quarter of said Section 20, a distance of 755.00 feet to the Point of Beginning; except any part in road right-of-way. AND EXCEPT ANY PART IN ROAD AND HIGHWAY.